STEVENS

ON

INDICTABLE OFFENCES

AND

SUMMARY CONVICTIONS.

FOUNDED ON

DOMINION STATUTES 32-33 VIC., CAPS 29, 30 AND 31.

BY

JAMES G. STEVENS, Q.C.,

ONE OF THE JUDGES OF THE COUNTY COURTS OF NEW BRUNSWICK.

Author of "Stevens' Digest of New Brunswick Reports," "An Index to the Statutes," etc., etc.

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PREFACE.

In the following work I have endeavoured to give a plain statement of the law relating to the right of arresting offenders and parties suspected of committing offences which are Indictable, and the proceedings under the Statute relating to such offences; as also the proceedings on convictions for offences punishable by Summary Conviction. The law relating to the latter Statute has been in some important matters amended within the last few years.

As the sections in the respective Statutes relating to above matters are in some respects unconnected, I have endeavoured to collate them under respective heads, and instead of making comments on each section separately in the order in which they are placed in the Statutes, I have considered them in separate Chapters in a connected view. This method, it is conceived, will be of advantage as a means of more ready reference.

I have in many cases given at some length the judgments of Courts, in order the more easily to enable the Magistrate and Lawyer to comprehend the principles endeavoured to be illustrated.

The latest amending Acts are properly inserted in the Statutes, and latest decisions are given applicable to the Statutes.

My aim has been to make the work, so much called for in some of the Provinces, an easy and practical guide to Magistrates and serviceable to the practicing lawyer.

The local laws of the respective Provinces are not embraced, but only the general laws of Canada relating to proceedings on Indictable Offences and Summary Convictions. In many respects the principles applicable to the latter will be of service in expounding the former.

I have made short allusions to the Statutes relating to summary and speedy trials.

JAS. G. STEVENS.

St. Stephen, N. B., August, 1880.

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PART I.

INDICTABLE OFFENCES.

CHAPTER I.

INTRODUCTORY.

Before considering the Statute respecting the duties of Justices of the Peace, out of sessions, in relation to persons charged with Indictable Offences, 32-33 Vic. c. 30, and the statute relating to Summary Convictions, 32-33 Vic. c. 31, and the amendments thereto; it may be well to refer shortly to some of the sections in the statute relating to procedure in criminal cases, 32-33 Vic. c. 29.

The meaning of words used in any Act of Parliament relating to Criminal Law, and what the interpretation shall be, is set forth in sub-sections to Section 1.

Those words to which attention is more particularly directed are "Indictment," what this term shall be understood to include, "Finding of Indictment," shall include "The taking of an Inquisition," "Exhibiting an Information," and "The Making of a Presentment."

Property shall be understood to include goods, chattels, money, valuable securities, and every other matter or thing whether real or personal, upon or with respect to which any offence may be committed. "*District, County* or *Place*" shall include any division of any Province of Canada, for purposes relative to the administration of justice in criminal cases.

In the Act relating to proceedings in Indictable Offences, 32-33 Vic. c. 30, the words "Territorial Division," whenever used in said Act shall mean County, union of Counties, Township, City, Town, Parish, or other juridical division or place to which the context may apply, (see section 65 of said Act.) And the same expression "Territorial Division," when used in the Summary Conviction Act, 32-33 Vic. c. 31,

shall mean as above, and the words "District or County" shall include any territorial or juridical division or place in and for which there is such Judge, Justice, Justice's Court, officer or prison, as is mentioned in the context, and to which the context may apply. (See section 94 of said Act).

Gender, Numbers, Bodies Corporate.—Females as well as males included, where masculine gender only used. Several matters of same kind to be included as well as one matter where singular number only used, and several persons as well as one person, and bodies corporate as well as individuals; and when a forfeiture or penalty is made payable to a party aggrieved, it shall be payable to a body corporate in case such a body be the party aggrieved.

Punishment to be only on due conviction of offence charged.

Different degrees or kinds of punishment to be in discretion of court or tribunal convicting, where party liable to such.

"*Penitentiary.*" To be the Penitentiary of Province in which conviction takes place.

"*Justice.*" To mean a Justice of the Peace.

"*Any Act*" or "*any other Act.*" General signification to all Acts passed by Parliament of Canada or by Legislature of late Province of Canada, or passed or to be passed by the Legislature of any Province of Canada, or passed by the Legislature of any Province included in Canada before it was included therein, unless there be something in the subject or context inconsistent with such construction.

SECTION 2.—This section refers to *apprehension of offenders.*

Any person found committing an offence punishable either upon indictment, or upon summary conviction, may be immediately apprehended by any constable or peace officer without a warrant, or by the owner of the property on or with respect to which the offence is being committed, or by his servant or any other person authorized by such

owner, and shall be forthwith taken before some neighboring Justice of the Peace to be dealt with according to law.

3. If any person to whom any property is offered to be sold, pawned, or delivered, has reasonable cause to suspect that any such offence has been committed on, or with respect to such property, he may, and if in his power, he shall apprehend and forthwith carry before a Justice of the Peace the party offering the same, together with such property, to be dealt with according to law.

4. Any person may apprehend any other person committing any indictable offence in the night, and shall convey or deliver him to some constable or other person in order to his being taken, as soon as conveniently may be, before a Justice of the Peace, to be dealt with according to law.

5. Any constable or peace officer may, without a warrant, take into custody any person whom he finds lying or loitering in any highway, yard or other place, during the night, and whom he has good cause to suspect of having committed or being about to commit any felony, and may detain such person until he can be brought before a Justice of the Peace to be dealt with according to law.

6. No person having been apprehended as last aforesaid shall be detained after noon of the following day without being brought before a Justice of the Peace.

Arrest Without Warrant of Justice.

Besides the cases mentioned in foregoing sections authority is given by special Acts to persons to arrest, not being constables or peace officers, and without a warrant. By 32–33 Vic., c. 27, s. 117, Larceny Act, Acts 1869, p. 223, it is provided, that any person found committing any offence punishable either upon indictment or upon summary conviction, by virtue of the Act, may be immediately apprehended without a warrant *by any person* and taken before a Justice of the Peace to be dealt with according to law.

Similar provision is made in regard to coinage offences, 32–33 Vic. c. 18, s. 33, Acts 1869, p. 148.

Disturbing Congregations, etc.

So also any peace officer present, or other person present, verbally authorized by any Justice of the Peace present, may arrest any person wilfully disturbing, etc., any assemblage of persons for religious worship, etc., 32–33 Vic. c. 20, s. 37, Acts 1869, p. 178.

Malicious Injury to Property.

By 32–33 Vic. c. 23, s. 69, Acts 1869, p. 243. Any peace officer or the owner of property injured, or his servant, or any person authorized by him, may apprehend any person found committing an offence against the Act.

Cruelty to Animals.

By 32–33 Vic. c. 27, s. 4, Acts 1869, p. 259. Any constable or other peace officer, or the owner of animal upon view, or upon the information to peace officer or constable, may seize and secure the offender without a warrant and convey him before a Justice of the Peace to be dealt with according to law.

Better Preservation of Peace in the Vicinity of Public Works.

By the Act 32–33 Vic. c. 24, s. 8, Acts 1869, page 250. Any Commissioner or Justice, Constable, Peace Officer, or any person acting under a warrant in aid of any constable or peace officer, may arrest and detain any person carrying arms unlawfully.

Army and Navy—Offences Against.

By 32–33 Vic. c. 25, s. 7. Deserters may be apprehended and brought up for examination before a Justice of the Peace.

Riots and Riotous Assemblies.

Acts, 31 Vic. c. 70, s. 4, gives general authority to Justices, Sheriffs, Constables, Peace Officers, and all persons required to aid to sieze and apprehend persons unlawfully, riotously and tumultuously continuing together after proclamation made, and to carry the persons before the Justice of the Peace of the district where such persons are apprehended, to be dealt with according to law.

Shipping of Seamen.

By 36 Vic. c. 129, s. 94, Acts of 1874. The Master or any mate, or the owner, ship's husband or consignee in any place in the Provinces of Quebec, Nova Scotia, New Brunswick and British Columbia, may apprehend without a warrant, a seaman refusing to proceed to sea, when duly engaged to serve, or if found absenting himself without leave.

Juvenile Offenders Escaping.

By 32–33 Vic. c. 34, s. 7, Acts 1869, p. 399. Offenders sentenced within the Province of Quebec, to be detained in a certified Reformatory School, escaping therefrom, may at any time before the expiration of period of detention be apprehended without warrant.

Officers and Private Persons.

Distinctions between officers and private persons in the power to arrest suspected persons, proceed upon the principle of discouraging persons from proceeding to extremities upon their own private suspicions or authority.

Persons found Committing or Attempting to Commit a Felony.

At common law all private persons are justified without a warrant in apprehending and detaining until they can be carried before a Magistrate, all persons found committing or attempting to commit a felony, and are bound to do so. *R.* v. *Hunt*, 1 Moo. C. C. 93; 2 Hawk. P. C., c. 12, s. 1. 1 East, P. C. 377, and the provisions contained in section 2 of 32–33 Vic. c. 29, are in great part but declaratory of the common law.

Arrest by Private Person—Suspicion of Felony—Arrest by Constable.

To justify a private individual in arresting a person on a charge of felony without a warrant, he must not only make out a reasonable ground of suspicion against such person, but must also prove that a felony has been committed. *Murphy* v. *Eills*. Stevens' Digest of N. Bk. Reports, 115.

If a constable have a reasonable suspicion that a man has committed a felony, he may apprehend him:—*Lawrence* v. *Hedger*, 3 Taunt, 14; *Nicholson* v. *Hardwick*, 5 Car. & P. 495; *Beckwith* v. *Philby*, 6 B. & C. 635. In the latter case Lord Tenterden, C.J. says:—"The only question of law in the case is, whether a constable having reasonable cause to suspect that a person has committed a felony may detain such person until he can be brought before a Justice of the Peace, to have his conduct investigated. There is this destinction between a private individual and a constable in order to justify the former in causing the imprisonment of a person, he must not only make out a reasonable ground of suspicion, but he must prove that a felony has actually been committed; whereas a constable having reasonable ground to suspect that a felony has been committed, is authorised to detain the party suspected, until inquiry can be made by the proper authorities."

In general, however, except in cases authorised by statute, a constable cannot, any more than a private person, of his own accord, and without an express charge or warrant, justify the arrest of a supposed offender upon suspicion of his guilt, unless he can shew that a felony was committed by some person, as well as the reasonableness of the suspicion that the party imprisoned is guilty.

If a reasonable charge of felony against a person be made to a constable, the constable will be justified in arresting him without warrant, although it afterwards turn out that the person was perfectly innocent, or that no felony had in fact been committed:—*Samuel* v. *Payne*, 1 Doug. 359; *Hobbs* v. *Branscomb*, 3 Camp. 420, in which case Lord Ellenborough says, the rule, that if a peace officer of his own head takes a person into custody on suspicion, he must prove that there was such a crime committed, but that if he receives a person into custody on a charge preferred by another, of felony or breach of the peace, then he is to be considered as a mere conduit; and if no felony or breach of the peace was committed, the person who preferred the charge, alone is responsible, appeared to be

reasonable; and that very injurious consequences might follow to the public, if peace officers who ought to receive into custody a person charged with felony, were personally answerable, should it turn out that in point of law no felony had been committed. See also *Davis* v. *Russell*, 5 Bing. 354; *Cowels* v. *Dunbar*, Moo. & M. 37; *R.* v. *Ford*, Russ. & R. 329.

What is a reasonable suspicion of felony, cannot of course, be stated with precision, but it has been always considered that a charge of felony by a person not manifestly unworthy of credit, is sufficient to justify the apprehension: 1 East. P. C. 302.

Breach of Peace.—Private Person Interfering.

Where a breach of the peace is actually being committed, any private person may interfere to prevent it, although no felony be committed or attempted, after proper warning and calling upon the parties to desist; and, if necessary, may apprehend and detain any persons taking part in the disturbance: Fost. 272, 311.

Assisting Officer.

Every private person is bound to assist an officer, demanding his help, in the taking of a felon, or in the suppressing of an affray and apprehending the affrayers; and if he refuse to assist, he may be indicted and punished as for a misdemeanour at common law: 1 East. P. C. 298; 1 Hawk., c. 12, s. 1; 1 Hale, 587; *Reg.* v. *Brown*, Car M. 314. In the case of *Reg.* v. *Brown*, it was decided that in order to support an indictment against a person for refusing to aid and assist a constable in the execution of his duty, in quelling a riot, it is necessary to prove, 1st, that the constable saw a breach of the peace committed; 2nd, that there was a reasonable necessity for calling on the defendant for his assistance; and 3rd, that when duly called upon to assist the constable, the defendant without any physical impossibility or lawful excuse, refused to do so; and in such a case it is no ground of defence that,

from the number of rioters, the single aid of the defendant would not have been of any use.

Arresting after Breach of Peace Committed.

There are authorities to the effect that the officer may arrest the party on the charge of another, though the affray is over, for the purpose of bringing him before a justice to find security for his appearance, but the better opinion was always said to be the other way: Roscoe on C. Ev. 262.

The law appears to be well settled that when an assault is over, and no further assault or affray is to be apprehended, and no fresh pursuit as would justify constables in breaking into the house or apprehending the party, that he cannot be apprehended without a warrant: see *Reg.* v. *Gardner*, 1 Moo, C. C., 390; *Reg.* v. *Walker*, Dears. C. C., 358. In the case of the *Queen* v. *Marsden*, L. R., 1 C. C. R. 131, the prisoner assaulted a police constable in the execution of his duty; the constable went for assistance and after an interval of an hour returned with three other constables, when he found that the prisoner had retired into his house, the door of which was closed and fastened; after another interval of fifteen minutes, the constable forced open the door, entered and arrested the prisoner, who wounded one of them in resisting his apprehension,—*Held*, that as there was no danger of any renewal of the original assault, and as the facts of the case did not constitute a fresh pursuit, the arrest was illegal.

Kelly, C.B., in delivering judgment says: "The question in this case is whether there was a lawful apprehension, which depends on whether the attack on the constable in the house was merely a continuance of the struggle which took place on the occasion of the first assault. Between the constable quitting the premises and his returning with the other constables an hour had elapsed, and it is impossible to say that what then occurred, was a continuation of the previous transaction.

The original assault and the rights connected therewith were at an end, and I am of opinion independently of authority, that the appprehension was unlawful."

If there could have been any doubt upon the subject: *Reg.* v. *Walker*, (Dears C. C., 358) would be conclusive.

Montague Smith, J., says: "There was nothing here to shew any reasonable apprehension that the affray would be continued; nor was there such a fresh pursuit as to justify the constable in breaking into the house."

Much however will be presumed in favor of an officer of justice when he has reasonable cause for supposing that acts of violence may be continued, and the opinion of a jury may very properly be taken in doubtful cases, in actions brought against peace officers. In *Baynes* v. *Brewster*, 2 Q. B., 375, it was held that a party is justified in giving in charge, and a constable in arresting without warrant, a party who has been guilty of a breach of the peace, if there are reasonable grounds for apprehending its continuance or immediate renewal, but not otherwise; and the circumstances from which such an inference is raised are for the jury.

Magistrates.

Whatever may be done by a constable or private person in respect of apprehending offenders without warrant, may likewise be done by a Justice of the Peace: 2 Hawk. c. 13, s. 13. So he may lawfully by word of mouth authorize any one to arrest a person who is guilty of a felony or an actual breach of the peace in his presence, and such command is a good warrant without writing: 2 Hawk. c. 13, s. 14, 2 Hale, 86.

Arrest, When and Where.

In order to prevent the escape of the party, an arrest for an indictable offence may be made at any time, on a Sunday as well as other days, and in the night as well as daytime: 1 East. P. C. 324; 5 Bing. 354, 16 M. & W. 172.

How Made.

An arrest is usually made by laying hands on the party, and detaining him if he resists. Although an arrest will

be good, if on the officers saying to the party: "I arrest you," the party acquiesces and goes with the officer; although it would be otherwise if the party did not acquiesce and made his escape. In *Gener* v. *Spark*, 1 Salk. 79, it was held that if the officer had touched the party to be arrested, and the party had instantly run away, this would have been a perfect arrest, and the running away of consequence, an escape. See *Russen* v. *Lucas*, 1 C. & P. 153.

If arrest is made by a private person, he should, if required, state to the party arrested, the cause of his arrest; but if the arrest is made by a peace officer, it is sufficient for him to state merely that he arrests in the Queen's name. 1 Hale, 589.

In making an arrest, no violence or rudeness should be used. A constable is not justified in hand-cuffing a prisoner unless he has attempted to escape, or unless it is necessary to prevent him doing so; *Wright* v. *Court*, 4 B. & C. 596. Every necessary precaution should be observed by the officer to prevent an escape of a prisoner, and in cases of grievous offences, and where the prisoner might be strongly tempted to effect his escape, in dread of the punishment of his crime, the officer would be justified in using all needful means to prevent this; but in ordinary cases of arrest, no unnecessary violence or harsh means should be used in securing the prisoner.

In the case of a private or special Bailiff, either it must appear that the party knew that he was such an officer, or some notification thereof that the party might have known it, the saying to the party "I arrest you" has been held a sufficient notice, so that if the person using these words be a Bailiff, and have a warrant constituting him such Bailiff, the killing of such officer will be murder: 1 Hale, 461; Mackally's case, 9 Coke, 69, C. A private or special Bailiff ought to shew his warrant upon which he acts, if it is demanded.

Breaking open Windows or Doors for purpose of Arrest.

Demand must be first made. The general rule is applicable alike to criminal as to civil cases as to breaking open

in order to make an arrest, viz., that before such extremity is resorted to, there must be a previous notification of the business, and a demand to enter on the one hand and refusal on the other: Fost. 320; 2 Hawk. P.C. cap. 14.

Privilege—To what it extends.

The privilege of a man's house being his castle, applies only to outward doors or windows—to the occupier of the house or any of his family—who have their ordinary domicile or residence there—and to arrest in the first instance.

A stranger taking refuge in the house of another, cannot claim the privilege of the house being his castle, but if the doors of a stranger are broken open upon the supposition of the person sought being there, it must be at the peril of finding him there, unless where the parties act under the sanction of a Magistrates Warrant: 2 Hale, 103. 1 East P. C. c. 5, s. 87, or "if the strangers was to use fraud and to inveigle the Sheriff into the belief that the defendant was concealed in his house for the purpose of favoring his escape, while the officers should be detained in searching or for any other reason, it might be held that he could not take advantage of his own deceit, so as to treat the Sheriff who entered under the false supposition thus induced, as a trespasser, or perhaps such conduct might be held to amount to a license to the Sheriff to enter." *Smith's note to last case*—see also as illustrative of this principle: *Gregg* v. *Wells*, 10 Ad. & El. 90.

Arrests in first Instance.

The privilege is likewise confined to arrests in the first instance—for if a man being legally arrested, escape from the officer, and take shelter, though in his own house, the officer may upon fresh pursuit break open doors in order to retake him, having first given due notice of his business and demanded admission and been refused.—Fost. 320: *Genner* v. *Sparks*, 1 Salk. 79; 1 Hale, 459, 2 Hawk. P.C. c. 14, s. 9.

The law according to Hawkins may be stated to be that, if a party to be arrested be in a house, and the doors be fastened, the doors may be broken open to arrest him, first however, demanding admittance and being refused in the following cases—first, upon a *capias* on an Indictment—second, when one known to have committed treason or felony, or to have given another a dangerous wound, is pursued by a constable or private person with or without a warrant—third, where an affray is made in a house in the view or hearing of a constable, or when affrayers fly to a house and are immediately pursued by a constable—fourth, where a person lawfully arrested, escapes and flies to a house. The same applies upon a warrant on a charge or suspicion of felony.

The privilege of a man's house being his castle, is only to be violated when absolute necessity compels the disregard of smaller rights in order to secure public benefit.

In *Smith* v. *Burpee*, N. Bk. Sup. Court, Stevens' Digest 310. It was held that a constable had no right to break open the doors of a dwelling house to execute a warrant, issued against the owner of the house on a conviction for selling spirituous liquors without license.

Dwelling House—What Comprehended in Term.

Within the term "Dwelling House" are comprehended all such buildings as are within in the Cartellage and so are considered parcel of the dwelling house at common law.

If a barn is adjoining to and parcel of the house, it cannot be broken into; if however, the barn be in a field or disconnected with the house, it may be broken into.

It will be observed that there is no difference as to the rights of a constable or private person to arrest in cases where it is certain that a felony has been committed or dangerous wound given, and if the offender being pursued takes refuge in his own house, either a constable or private person, without distinction may without warrant break open his doors, after proper demand of admittance and refusal, and it has been held lawful for a private individual

to break and enter the house of another in order to prevent him from murdering another who cries out for assistance, and if the door is fastened and there exists reasonable cause to presume, that the life could not otherwise be preserved than by immediately breaking open the door and entering the dwelling house, and possession could not otherwise be obtained, a private person will be justified in breaking and entering the house. See *Handcock* v. *Baker* 2 B. & P. 260, in which case Chambre, J., says "It is lawful for a private person to do anything to prevent the perpetration of a felony."

The material distinction between the power of officers and private individuals is to be borne in mind, viz., that the latter can act only on their own knowledge, whilst the former may proceed on the information of others, *Samuel* v. *Payne*, 1 Doug. 359. A private individual in order to justify the breaking open doors without a warrant, must in general prove the actual guilt of the party arrested, and it will not suffice to show that a felony has actually been committed by another person, or that a reasonable ground of suspicion existed; but an officer acting *bona fide* on the positive charge of another will be excused, and the party making the accusation alone will be liable.

Killing Party resisting or escaping.

If the officer or other person in endeavouring to make a legal arrest in cases of felony be resisted, and on opposing force to force he happens to kill the party, the homicide is justifiable: 1 Hale, 494, Fost. 318; and the officer or other person need not retreat as in the ordinary cases of defence: 2 Hale, 218; but if the arrest would have been illegal, the killing would amount to manslaughter: Fost. 318. So also when a party may be lawfully arrested for felony, and he, knowing the cause, flies so that he cannot be taken, otherwise than by killing him, the constable pursuing him will be justified in killing him, or a private person will, in like manner, be justified, if he can prove that the deceased was actually guilty of a felony: 2 Hale, 118, 119; 1 East.

P. C. 298. It is otherwise however, in cases of misdemeanour only, in which case a constable will not be justified in killing in pursuit or on resistance.

Legality of Process.

The Process whether Writ or Warrant, must not be defective in the frame of it, and must issue in the ordinary course of justice from a Court or Magistrate having jurisdiction of the cause. The officer at his peril is bound to pay obedience to a Process, if the matter be within the jurisdiction of Court or Magistrate, issuing same, although there may have been error or irregularity in the proceedings previous to the issuing of the Process, and the officer will be justified in killing those who oppose him in executing it: 1 Hale, 459.

Misdemeanours.

In offences less than felony it is essential that the warrant to arrest should be in the possession of the person seeking to arrest, for the man arrested has a right to see the warrant, and may resist it, unless it is produced, though it is immaterial whether he asks for it or not: *Cadd* v. *Cabe*, L. R., 1 Ex. Div. 352. The appellant in this case was summoned to answer an information charging him with trespass in pursuit of conies. As he did not appear in obedience to the summons, a warrant was issued for his apprehension. The respondent, being a police officer to whom the warrant was directed, but not having it in his possession, attempted to arrest the appellant, who, thereupon committed an assault upon him.—*Held*, that the appellant could not be convicted upon an information, charging him with assaulting the respondent in the execution of his duty.

CHAPTER II.

32 & 33 Victoria Chap. XXX.

An Act respecting the duties of Justices of the Peace, out of Sessions, in relation to persons charged with Indictable Offences.

[*Assented to 22nd June, 1869.*]

Preamble.

WHEREAS it is expedient to assimilate, amend and consolidate the Statute Laws of the several Provinces of Quebec, Ontario, Nova Scotia and New Brunswick, respecting the duties of Justices of the Peace out of sessions, in relation to persons charged with indictable offences, and to extend the same as so consolidated to all Canada: Therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

This Act is extended to the Province of British Columbia, see 37 Vic. c. 42: To Manitoba, see 34 Vic. c. 14; to the District of Keewatin, see 37 Vic. c. 21. Making provisions for indictable offences committed in the said District, and triable in Manitoba, or committed in some Province in Canada, and the offender apprehended in the said District.

Also extended to the North-west Territories, as far as respects indictable offences committed in the North-west Territories, and triable in Manitoba, or committed in some Province of Canada, and the offender apprehended in the North-west Territories, see 38 Vic. c. 49: Schedule B. To Prince Edward Island, see 40 Vic. c. 4.

For what offences a Justice of the Peace may grant a warrant to cause a person charged

I. In all cases where a charge or complaint (A) is made before any one or more of Her Majesty's Justices of the Peace for any Territorial Division in Canada, that any person has committed, or is suspected to have committed, any treason or felony, or any indictable misdemeanor or offence, within the limits of the jurisdiction of such Justice or Justices of the Peace, or that any person guilty or suspected to be guilty of

therewith to be brought before him.

having committed any such crime or offence elsewhere out of the jurisdiction of such Justice or Justices, is residing or being, or is suspected to reside or be within the limits of the jurisdiction of such Justice or Justices, then, and in every such case, if the person so charged or complained against is not in custody, such Justice or Justices of the Peace may issue his or their Warrant (B) to apprehend such person, and to cause him to be brought before such Justice or Justices, or any other Justice or Justices for the same Territorial Division.

If a warrant is to be issued, information to be upon oath, etc.

9. In all cases when a charge or complaint for an indictable offence is made before any Justice or Justices, if it be intended to issue a Warrant in the first instance against the party charged, an information and complaint thereof (A) in writing on the oath or affirmation of the informant, or of some witness or witnesses in that behalf, shall be laid before such Justice or Justices.

If a person be apprehended in one division for an offence committed in another, he may be examined in the former, and committed in the latter.

10. Whenever a person appears or is brought before a Justice or Justices of the Peace in the Territorial Division wherein such Justice or Justices have jurisdiction, charged with an offence alleged to have been committed by him within any Territorial Division in Canada wherein such Justice or Justices have not jursdiction, such Justice or Justices, shall examine such witnesses and receive such evidence in proof of the charge, as may be produced before him or them within his or their jurisdiction; and if in his or their opinion, such testimony and evidence be sufficient proof of the charge made against the accused party, the Justice or Justices shall thereupon commit him to the Common Gaol for the Territorial Division where the offence is alleged to have been committed, or shall admit him to bail as hereinafter mentioned, and shall bind over the prosecutor (if he has appeared before him or them) and the witnesses, by recognizance as hereinbefore mentioned.

It has been long settled that if a man commit a felony in one county and go into another county, a Justice of the latter county may upon information given, issue a warrant to apprehend him, and take his examination and the information against him, and may commit him to the gaol of the county in which offence committed, and bind over the witnesses to give evidence at the trial, and, in fact, may proceed as if the offence had been committed within his jurisdiction.

If it is not made a condition precedent to the Justices acting, that an information should be laid, and deposed to on oath, the want of an information would seem not to deprive the Justice of jurisdiction, if the party is brought before him, and charged with the offence, if the Justice has jurisdiction to deal with the matter. According to the judgments delivered in the late case of *Reg.* v. *Hughes*, L. R., 4 Q.B., Div. 623, if a charge is made before the Justices of an indictable offence committed within the jurisdiction by a person then bodily present, the Justices are bound to take cognizances of it. In this case where a party was in the presence of the Justices, but where no information in writing or on oath was laid, Huddleston B. says: "I entertain no doubt that there need not have been an information on oath or warrant to give the Justices jurisdiction to hear and commit or discharge." The cases that are quoted to shew the necessity of an information, are where the Statute requires such to be done as a condition precedent to jurisdiction attaching, but where the Justice has jurisdiction and the provisions in the statute are merely for the purpose of bringing people not already in custody before the Justices, an information in writing or under oath would not seem to be necessary, if party is brought up and charged instanter. If a person is before the Justices and is informed of the charge against him, and he desires there and then to meet it and requires no adjournment, it would seem unreasonable that the Justices should refuse to hear the charge, because the party is not brought before them by summons on an information.

If a person be apprehended in one division for an offence committed in another, he may be examined in the former, and committed in the latter.

The summons and also the warrant are mere processes for the purpose of bringing the party complained of before the Justices, and as said by

If a person be apprehended in one division for an offence committed in another, he may be examined in the former, and committed in the latter.

Lopes, J., in above case, have nothing whatever to do with the jurisdiction of the Justices.

If a warrant is issued without the provisions of the statute being followed, the Justice would be liable in trespass for so doing, but this it seems would not affect the jurisdiction to deal with the offender if brought before the Justice and there and then charged with offence.

See remarks on above case of *Reg.* v. *Hughes*, post under Summary Conviction Act.

Justices have a right to exercise their discretion in refusing to hear and act upon information, and may leave the complaining party to originate his prosecution before a grand jury. *Reg.* v. *Ingham*, 14 Q. B., 396.

The real object of examinations before Justices is that the party accused may be put under such terms as will make it certain that he will be forthcoming for trial, and where there is no danger that he will not be forthcoming for trial, they may think that Justice would be prejudiced by hearing the information. Earle J. ib.

But it is desirable that the prosecutor in all cases, where an indictment is to be preferred, should go in first instance before the Justice. By section 28 of Chapter 29, 32–33 Vic., Stat. of Canada, it is provided that no Bill of Indictment for perjury, subornation of perjury, conspiracy, obtaining money or other property by false pretences, keeping a gambling house, disorderly house, or any indecent assault, and by Statute 40 Vic., Chap. 26, also nuisance, forcible entry or detainer, shall be presented to grand jury, unless party has been bound by recognizance to prosecute, or by direction of Attorney-General or Solicitor-General or Judge of Court. In such cases, the Magistrate should

not refuse to entertain the information unless for the most satisfactory reasons.

If a person be apprehended in one division for an offence committed in another, he may be examined in the former, and committed in the latter.

INFORMATION OR COMPLAINT.

The party who knows or suspects that an indictable offence has been committed, goes before the Justice of the Peace and gives him the information, stating if necessary his grounds of suspicion on which the charge is founded. The information should be taken as nearly as possible in the language of the party. The Magistrate may examine other witnesses, if, in his discretion he thinks it necessary, before granting a summons or warrant, so as to satisfy himself of the reasonable grounds for supposing the party to be guilty, but in cases where the credibility of the complainant or witness is such as to lead the Magistrate to believe him, and the matters stated by him are positive as to the offence charged, no other witness should, at this stage of proceedings, be examined. The information or complaint of the informer should be sufficient. It is well however for the Magistrate to be well satisfied that the offence complained of, is an indictable offence, and not merely one of a civil nature.

It not unfrequently happens that charges are made which are merely civil, not criminal wrongs; persons for example, are sometimes accused of obtaining money or other property under false pretences, when, in fact, the matter complained of, only gives rise to a civil remedy.

SUMMONS OR WARRANT.

SECTIONS 2, 10, 13, 16.

In what case the party may be summoned instead of

2. In all cases the Justice or Justices to whom the charge or complaint is preferred, instead of issuing in the first instance his or their Warrant to apprehend the person charged or complained against, may, if he or they think fit,

issuing a warrant in the first instance.

issue his or their Summons (C) directed to such person, requiring him to appear before the Justice or Justices, at the time and place to be therein mentioned, or before such other Justice or Justices of the same Territorial Division as may then be there, and if, after being served with the Summons in manner hereinafter mentioned he fails to appear at such time and place, in obedience to such Summons, the Justice or Justices, or any other Justice or Justices of the Peace for the same Territorial Division, may issue his or their Warrant (D) to apprehend the person so charged or complained against, and cause such person to be brought before him or them, or before some other Justice or Justices of the Peace for the same Territorial Division, to answer to the charge or complaint, and to be further dealt with according to law; But any Justice or Justices of the Peace may, if he or they see fit, issue the Warrant hereinbefore first mentioned, at any time before or after the time mentioned in the Summons for the appearance of the accused party.

Where summons is to be issued, information to be under oath.

10. When it is intended to issue a Summons instead of a Warrant in the first instance, the information and complaint shall also be in writing, and be sworn to, or affirmed in manner aforesaid, except only in cases where by some Act or Law it is specially provided that the information and complaint may be by parole merely, and without any oath or affirmation to support or substantiate the same.

Upon complaint, Justice may issue Summons or Warrant for appearance of party charged

13. Upon information and complaint as aforesaid, the Justice or Justices receiving the same may, if he or they think fit, issue his or their Summons or Warrant as hereinbefore directed, to cause the person charged, to be and appear as therein and thereby directed: and every Summons (C) shall be directed to the party so charged by the information, and shall state shortly the matter of such information, and shall require the party to whom it is directed to be and appear at a certain time and place therein mentioned, before the Justice who issues the summons, or before such other Justice or Justices of the Peace for the same territoral Division as may then be there, to answer to the charge, and to be further dealt with according to law.

If party does not appear Justice may issue a Warrant.

14. If the person served does not appear before the Justice or Justices, at the time and place mentioned in the Summons, in obedience to the same, the Justice or Justices may issue his or their Warrant (D) for apprehending the party so summoned, and bringing him before him or them, or before some other Justice or Justices for the same Territorial Division, to answer the charge in the information and complaint mentioned, and to be further dealt with according to law.

By section 2, the Justice has discretionary power to issue a summons (Form C) in the first instance, instead of a warrant, and if party fails to appear at time and place mentioned in summons, a warrant may be issued (Form D). This course however, does not prevent the issuing of a warrant at any time before or after the time mentioned in the summons for the appearance of the party.

If party summoned does not attend, Justice may issue a warrant.

Where the offence is not of an aggravated nature, and the party accused is not likely to abscond, a summons would be the more preferable course in first instance. A warrant may be issued on a Sunday as well as on other days, see section 8.

By section 10, the information or complaint requires to be under oath as well in cases where a summons is issued as a warrant, unless the proceedings are had under some special Act pending for parole statement or otherwise.

Issue of Summons—Requisites of Summons.

By section 13, a summons, if issued instead of a warrant, shall be directed to the party charged by the information, and should state shortly the nature of the information, and shall require the party to whom it is directed to be at a *certain time and place*, therein mentioned, before the Justice who issued the same, or before some other Justice or Justices of the Peace, for the same Territorial Division as may then be there, to answer the charge and to be further dealt with according to law; see form of summons (C.)

Under section 16, the Magistrate has power to issue a warrant, if summons is disobeyed; he should see that the oath has been made, of the manner of service of summons, as provided for by sections 14 and 15.

Indictable offences committed on the high seas, etc. in which the Admiralty of England has jurisdiction, or on land beyond the seas.

3. In all cases of indictable offences committed on the high seas, or in any creek, harbour, haven or other place, in which the Admiralty of England have, or claim to have jurisdiction, and in all cases of offences committed on land beyond the seas, for which an indictment may be preferred or the offender may be arrested in Canada, any one or more Justice or Justices for any territorial division in which any person charged with having committed, or being suspected to have committed any such offence, shall be or be suspected to be, may issue his or their warrant (D 2) to apprehend such person, to be dealt with as therein and hereby directed.

As to the jurisdiction of the Admiralty over offences committed on the High Seas, a very comprehensive and elaborate discussion of this matter took place in the case of *The Queen* v. *Keyn*, L.R., 2 Ex. Div. 63 The prisoner was indicted at the Central Criminal Court for manslaughter. He was in command of a foreign ship, and was a foreigner, passing within three miles of the shore of England, on a voyage to a foreign part; and whilst within that distance his ship ran into a British ship and sunk her, whereby a passenger on board the latter ship was drowned. The facts of the case were such as to amount to manslaughter, by English law; *Held*, by the majority of the Court that the Central Criminal Court had no jurisdiction to try the prisoner for the offence charged.

The question was much discussed as to what was High Sea, within the Realm of England, and it was held that the offence under the above facts, unless cognizable as having been committed on what may be called the Territorial Waters of Great Britain, was not one for which the party could be indicted in England. What those Territorial Waters were, was held to extend only to the limits of the Realm, which consisted of the land within the body of the Counties, and all below high water mark was part of the High Seas, outside such jurisdiction, and that any

enlargement of the area could only be effected by Act of Parliament; and that upon the High Seas, the Admiralty jurisdiction was confined to British ships, and that the defendant having been a foreign subject, on board a foreign ship on a foreign voyage, and on the High Seas, outside the Realm, at the time the offence was committed, is not amenable to the laws of England, and therefore no jurisdiction to try him. Had the offence been committed on board a British vessel the foreigner would have been liable.

Indictable offences committed on the high seas, etc. in which the Admirality of England has jurisdiction, or on land beyond the seas.

As to offences committed on land beyond the seas, it was held in the case of *The Queen* v. *Eyre*, L. R., 3 Q. B., 487, that a Magistrate has jurisdiction to entertain the charge, he having jurisdiction in the County where the defendant is found to be, and has jurisdiction to deal with such offence, in the same manner as with any other offence committed within his jurisdiction.

The section of the English Act in regard to this matter is similar to the section 3 of the Dominion Act, and is intended to embrace every description of indictable offence, and to deal with same as in other proceedings where offence is committed within the territory of the Magistrate's jurisdiction.

SECTIONS 4, 5, 6, 7.

4. In case an indictment be found by the Grand Jury in any Court of Criminal jurisdiction, against any person then at large, and whether such person has been bound by any Recognizance to appear to answer to any such charge or not, and in case such person has not appeared and pleaded to the indictment, the person who acts as Clerk of the Crown or Chief Clerk of such Court shall, at any time at the end of the term or sittings of the Court, at which the indictment has been found, upon application of the Prosecutor, or of any person on his behalf, and on payment of a fee of twenty cents, grant to such Prosecutor or person a certificate (F) of such indictment having been found; and upon production of such Certificate to any Justice or Justices of the Peace for the Terri-

Warrant to apprehend party against whom an indictment is found.

torial Division in which the offence is in the indictment alleged to have been committed, or in which the person indicted resides, or is supposed or suspected to reside, or be, such Justice or Justices shall issue his or their Warrant (G) to apprehend the person so indicted, and to cause him to be brought before such Justice or Justices, or any other Justice or Justices for the same Territorial Division, to be dealt with according to law.

Commitment, or bail.

5. If the person be thereupon apprehended and brought before any such Justice or Justices, such Justice or Justices, upon it being proved upon oath or affirmation before him or them, that the person so apprehended, is the person charged and named in the indictment, shall, without further inquiry or examination, commit (H) him for trial or admit him to bail in manner hereinafter mentioned.

If person indicted be already in prison for some other offence, Justice may order him to be detained until removed by writ of *habeas corpus* or otherwise discharged.

6. If the person so indicted is confined in any gaol or prison for any other offence than that charged in the indictment at the time of such application and production of such Certificate to the Justice or Justices, such Justice or Justices, upon its being proved before him or them, upon oath or affirmation, that the person so indicted and the person so confined in prison are one and the same person, shall issue his or their Warrant (I) directed to the Gaoler or Keeper of the gaol or prison, in which the person so indicted is then confined, commanding him to detain such person in his custody, until, by Her Majesty's Writ of Habeas Corpus, or by order of the proper Court he be removed therefrom for the purpose of being tried upon the said indictment, or until he be otherwise removed or discharged out of his custody by due course of law.

Not to prevent Bench Warrants issuing.

7. Nothing in this Act contained shall prevent the issuing or execution of Bench Warrants, whenever any Court of competent jurisdiction thinks proper to order the issuing of any such Warrant.

It is not always the case that a preliminary investigation has been had before a Magistrate and the party bound over for trial, nor is it necessary that such should be done before an indictment can be found, except when otherwise specially provided for by statute, as in cases mentioned in Act, 32–33 Vic. 29, s. 28, and 40 Vic. c. 26.

Evidence may be laid before the Grand Jury at the meeting of the Court having Criminal Jurisdiction, and it sometimes may happen that

a crime may have been committed on same day, and the presentment of information in such case may be at once made before the Grand Jury, who may, if the evidence is sufficient, find a True Bill. The party accused may, however, not be under arrest, and in such case if it is desired to proceed with the trial before a petit jury at sittings of Court, a Bench Warrant may issue to arrest the accused, (see section 7,) but if there is no likelihood of having party at once arrested, or for other reasons it is deemed expedient to delay the trial of case, the prosecutor is entitled to have a certificate granted to him of such indictment having been found, and this certificate is the justification to the Justice to issue his warrant for the arrest of accused, who, when arrested, is to be dealt with as in case where the Magistrate has made an order of committal on a preliminary examination—committing him for trial to the next Court of Criminal Jurisdiction, or admitting him to bail, in cases where he has power to do so.

Not to prevent Bench Warrants issuing.

It will be borne in mind that sections 52 and 56, authorize the Justice or Justices to admit to bail, when they can judge of the evidence adduced, taken before such Justice or Justices, but when they have no opportunity of determining as to the nature of the case and the evidence in support of same, their power cannot be exercised so as to admit to bail in cases of felony, where a certificate is produced of an indictment having been found, so that it would seem that they must commit to goal, in which case the party would be privileged to apply to the Court or Judge for bail. As, however, the Justice has power to admit to bail in all cases of misdemeanor, he ought to bail the party where the indictment is for such lesser offence only.

Detainer When Party already in Goal for Other Offence.

If the party is in goal already for other offence, then he is to be detained as provided for in section 6.

Warrant may be issued on Sunday.

8. Any Justice or Justices of the Peace may grant or issue any Warrant as aforesaid, or any Search Warrant, on a Sunday as well as on any other day.

This section allows the arrest of a party on a Sunday as well as on other days, and does not seem to confine the arrest to cases of felony, but to any indictable offence, as this section must be read in connection with the previous sections which mentions misdemeanors.

It does not however authorize the issuing of a summons on a Sunday, although as incident to the right to issue a warrant to arrest, an information or complaint may be laid, and necessary preliminary examination for the purposes of arrest may be had on a Sunday.

If a warrant is to be issued, information to be upon oath, etc.

9. In all cases when a charge or complaint for an indictable offence is made before any Justice or Justices, if it be intended to issue a Warrant in the first instance against the party charged, an information and complaint thereof (A) in writing on the oath or affirmation of the informant, or of some witness or witnesses in that behalf, shall be laid before such Justice or Justices.

"*See remarks under Section* 1."

If a summons is to be issued, information to be upon oath, etc.

10. When it is intended to issue a Summons instead of a Warrant in the first instance, the information and complaint shall also be in writing, and be sworn to or affirmed in manner aforesaid, except only in cases where by some Act or Law it is specially provided that the information and complaint may be by parole merely, and without any oath or affirmation to support or substantiate the same.

"*See remarks under Section* 2."

No objection allowed for alleged defect in informa-

11. No objection shall be taken or allowed to any information and complaint for any alleged defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecution, before the

Justice or Justices who take the examination of the witnesses in that behalf.
"*See remarks under Section* 1, *Summary Conviction Act, post*," "*Waiver of Objection*."

tion or complaint—variance.

When the Magistrate has observed the preliminaries required to give him jurisdiction in any particular, and when he has a right to adjudicate upon the question as to the propriety of issuing a warrant, no mere error of opinion or judgment will render him liable. He is bound to decide in such a case, and unless he acts corruptly the law will not allow him to be punished, because he did not decide rightly. When, however, a Magistrate acts in bad faith, and grants a warrant against an innocent man, without oath, being first made on information, or upon an oath of facts and circumstances, affording no rational ground of suspicion whatever, he will subject himself to an action: 1 Chitty, Cr. L. 34, 2 Hawk. P. C. c. 13, s. 18.

If the Magistrate has jurisdiction over the matter of complaint and person, and as regards time and place, and acts in his duty as such Magistrate, a mere irregularity will not make him liable without proof of malice, and want of probable cause, although he may be made liable as not having jurisdiction, and in not having pursued the statutory requirements to give him such.

In a case decided in the Supreme Court of New Brunswick: *Birch* v. *Perkins*, 2 Pug. 327, it was held, that the Magistrate having jurisdiction over the subject-matter of the complaint and over the plaintiff's person, trespass would not lie against him without proof of malice, or want of probable cause, where an irregularity in summons and copy existed, in not containing the return day, and where the party against whom summons was issued did not appear, and a

No objection allowed for alleged defect in information or complaint—variance.

warrant was thereupon issued against him, upon which he was imprisoned. Where the Magistrate has no jurisdiction, the question of reasonable and probable cause does not arise. The defendant, a Justice of the Peace, issued a warrant to arrest the female plaintiff on an information stating that she did "unlawfully take and carry away from his (the informant's) protection, her daughter, S. W."

The Justice preferred to act under the Dominion Statutes, 32-33 Vic. c. 20, s. 56.—*Held*, in an action for assault and false imprisonment, that the defendant had no jurisdiction to issue a warrant on this information, and was liable to an action of trespass, and that the question of reasonable and probable cause can only arise where the Justice has jurisdiction. *Whittier and wife* v. *Dibble*, 2 Pug. 243.

It is the duty of the Magistrate to consider well what is sworn to, and to be well satisfied of the reasonable cause of complaint, and not to grant any warrant heedlessly, groundlessly, or maliciously, and to see that such cause exists, as might lead a discreet and impartial man to suspect the party to be guilty: 1 Chit. C. L. 34; 2 Hawk. P. C., c. 13, s. 18.

Allegations of mere suspicion are not sufficient, the facts and circumstances should be laid before him, and sufficient made to appear, that a a crime has been committed, and that there is reasonable cause for charging the individual complained against. It is sufficient if the testimony shews a probable case of guilt.

Instances arise where the application for Criminal Process is made to gratify revengeful feelings, or to procure the conviction of some person of an infamous crime, who is likely to be a witness against the complainant, and thus to

disqualify or to affect his testimony; and from want of searching inquiry on the part of the Magistrate, or an easy carelessness, the public are subjected to the expense of a groundless prosecution, and the process of the law thus prostituted to fraud and oppression.

No objection allowed for alleged defect in information or complaint—variance.

When the complaint has been reduced into writing, it should be read over to the complainant or witness, so that he may well understand it, and have an opportunity of correcting it, if need be; it should then be signed by the complainant, or if he is unable to sign, it should be certified that it was read over to him, the complainant should affix his mark, and the Magistrate should sign, after having sworn the complainant to the complaint made, as well as witness the sign. The information need state only the offence with intelligible certainty and particularity, care being always had, that the offence charged is an indictable offence, and committed within the limits of the jurisdiction of the Justice, or under the provisions of section 46. Where special proceedings are had for offences committed in another County or place, the Justice should be satisfied that the charge is an indictable offence, before he commits the party.

A Justice of the Peace is liable in an action for false imprisonment if he commits a person for trial who is brought before him on a criminal charge, without taking an examination respecting the charge, as required by law.

An examination taken beyond the limits of his jurisdiction, except in cases provided for by the Statute, would be a nullity. See *Nary* v. *Owen*, Burton's N. B'k. Reports, 377.

SECTIONS 12 AND 17.

Search Warrant—Larceny or felony respecting property.

12. If a credible witness proves upon oath (E 1) before a Justice of the Peace, that there is reasonable cause to suspect that any property whatsoever, on or with respect to which any larceny or felony has been committed, is in any dwelling house, outhouse, garden, yard, croft or other place or places, the Justice may grant a Warrant (E 2) to search such dwelling house, garden, yard, croft or other place or places, for such property, and if the same, or any part thereof be then found, to bring the same and the person or persons in whose possession such house or other place then is, before the Justice granting the Warrant, or some other Justice for the same Territorial Division.

Warrant to apprehend parties must be under the hand and seal of Justice—to whom addressed.

17. Every Warrant (B) hereafter issued by any Justice or Justices of the Peace to apprehend any person charged with any indictable offence, shall be under the hand and seal, or hands and seals, of the Justice or Justices issuing the same, and may be directed to all or any of the Constables or other Peace Officers of the Territorial Division within which the same is to be executed, or to any such Constable and all other Constables or Peace Officers in the Territorial Division within which the Justice or Justices issuing the same has jurisdiction, or generally to all the Constables or Peace Officers within such last mentioned Territorial Division, and it shall state shortly the offence on which it is founded, and shall name or otherwise describe the offender, and it shall order the person or persons to whom it is directed to apprehend the offender, and bring him before the Justice or Justices issuing the Warrant, or before some other Justice or Justices of the Peace for the same Territorial Division, to answer to the charge contained in the information, and to be further dealt with according to law.

Search Warrant.

This warrant is not to be granted without oath made before the Justice in terms of the section. The oath need not positively and directly aver that the property has been stolen.

Upon a representation to a Magistrate that a person has reason to suspect that his property has been stolen, or is concealed in a certain place, the Magistrate may lawfully issue his warrant to search the place and bring the occupier or owner before him, *Elsee* v. *Smith*, 1 D. & R. 97; although it is well for the Magis-

trate before granting a warrant to ascertain as fully as possible the grounds of complainant's suspicion, and to satisfy himself that a reasonable ground of suspicion exists. The oath (E. 1, in form of Act given), made by a creditable witness will be a sufficient authority to the Magistrate to issue his warrant.

Warrant to apprehend parties must be under the hand and seal of Justice—to whom addressed.

If it is wrongfully issued, the party who causes it to be issued must make reparation to the person injured, but the Magistrate would not be liable. If the party making oath has sworn falsely or without any reasonable grounds to warrant his suspicion, he will be liable in trespass for putting the law in force without just cause, and the Magistrate would make himself liable if he issues a search warrant without sufficient oath of party, or if he acts corruptly in the granting of same.

In cases of information generally, a person is not liable to an action for false imprisonment, who merely lodges a complaint before a Justice, and leaves the proceedings to be taken in the discretion of the Justice, if however he interferes in a manner beyond what he might do, and the arrest and imprisonment should turn out to be unjustifiable, he will render himself liable. See *Brown* v. *Moore*: 2 Pug. N. B'k. 409.

The place in which search is allowed to be made should be particularly designated.

The Magistrate may order that the defendant's person, or clothes, or trunk be searched, for goods alleged to be stolen, or for coin, bank notes, papers, and the like charged to have been forged or counterfeited by him, and such goods or articles thus found, may be taken from him and kept by the Magistrate to be used in evidence on the trial in Court, and subsequently disposed of

Warrant to apprehend parties must be under the hand and seal of Justice—to whom addressed.

as the court may direct; similar search may be made for weapons or instruments by which a murder, manslaughter or aggravated assault and battery was committed, or for implements or utensils by which a burglary, robbery, forgery or other offence was perpetrated.

The power of search, may properly extend for any articles or things connected with the commission of the offence charged, and furnishing evidence of it.

Restoration of Property.

If the constable has taken possession of the property found on the person of the prisoner, the Court will order to be restored to him that portion of it, which is not required as means of proof at the trial, or which does not fairly appear to be the produce of the crime with which he is charged.

Duty of Officer in Executing Warrant.

In executing a Search Warrant, the officer must be careful strictly to pursue its directions. As the warrant should distinctly specify the goods to be seized, the officer should not take any but those specified. Where, therefore, a warrant was granted expressly to seize stolen sugar, and the officer seized tea, he was held to have exceeded his authority, and to be liable to the party aggrieved for a trespass: *Pine* v. *Messenger*, Q. B. & P. 158.

So also, where the constable having a warrant to search for specific articles alleged to have been stolen, found and took away these and certain others supposed to be also stolen, but not mentioned in the warrant, and not likely to be of use in substantiating the charge of stealing the goods that were specified, it was held that the constable was a trespasser: *Crossin*

v. *Cundy*, 9 Dow. & Ry. 224; 6 Barn & Cress, 332. In this case, however, Abbot, C. J., said: "If these articles had been likely to furnish evidence of the identity of the articles stolen and mentioned in the warrant, there might have been reasonable ground for seizing them, although not specified in the warrant;" and he added, that he expressed himself thus, to prevent the supposition that a constable seizing articles not mentioned in the warrant, is necessarily a trespasser. The duty of an officer and those acting in aid of him in executing a Search Warrant, is well and legally discharged, if, upon making the search required and finding goods corresponding in description with those directed to be searched for, he seizes such goods and brings them with the person whose premises he is directed to search, before a magistrate for further proceedings. The officer is not made the judge in the last resort, of the identity of the goods with those stolen.

Warrant to apprehend parties must be under the hand and seal of Justice—to whom addressed.

Although the goods be not found, the officer will not be responsible if he has acted in obedience to the warrant: 3 Esp. 135, 2 B. & P. 160.

Breaking Open Doors, etc.—See Note.

The constable is to keep the warrant in his possession, and if taken from him, may coerce the person improperly refusing to deliver it up, using however, no unnecessary violence: 3 Car. & P. 31.

The party who had the custody of the goods should be discharged if they were not stolen; if they were stolen, not by him, but by another person who sold or delivered them to him, and it appears that he was ignorant of the mode in which they were procured, and innocent of having any

Warrant to apprehend parties must be under the hand and seal of Justice—to whom addressed.

knowledge of the theft, he may be discharged; but bound over to give evidence as a witness against the person suspected of having stolen them. If, however, it appears that he knew the goods to have been stolen, then he should be either committed as for a felony, if the original offence of stealing or taking such goods, appears to have been a felony: 2 Hale, 151; or, bailed and bound over to answer the charge, if the case requires it. So also, if the offence was a misdemeanour.

The proceedings on Search Warrants should be strictly legal, and if the party procuring the warrant has no ground for his proceedings, and is actuated by malicious motives, an action will lie against him.

A Search Warrant may issue on a Sunday. See section 8.

Warrant to Apprehend Party.

Section 17, provides that every warrant to apprehend parties must be under the hand and seal of the Justice or Justices who issue same.

Any impression purporting to be his or their seals will be sufficient as a seal: *R.* v. *St. Paul*, 7 Q.B. 232.

See post Summary Conviction Act.

Direction of Warrant.

It may be directed to all or any of the constables or other peace officers of the territorial division, within which, the Justice or Justices issuing same have jurisdiction, or generally to all the constables or peace officers within such last mentioned division.

Statement of Offence.

The offence on which warrant is founded, is to be shortly stated in warrant.

Name of Offender.

The name of the offender is to be stated, or if unknown, he is to be otherwise described.

Warrant to apprehend parties must be under the hand and seal of Justice—to whom addressed.

The warrant should not be general to arrest all persons suspected, but should direct the officer to apprehend some particular individual. A warrant to apprehend all persons suspected or guilty of a crime, without naming or describing any particular person, would be illegal and void for uncertainty, for it must not be left to the constable or peace officer to judge of the grounds of suspicion. The magistrate is the judge of this. It is of the essence of a warrant, that it should be so framed, that the officer should know whom he is to take, and that the party upon whom it is executed, should know whether he is bound to submit to the arrest.

If the name inserted in the warrant be not the right one, or be fictitious only, the arrest cannot be justified, even though the person arrested be the one intended, unless he is known as well by the name in the warrant, as by his true name: *Shadgett* v. *Clipson*, 8 East. 328.

Name of Party Unknown.

If the name of the party be unknown, the warrant may be issued against him by the best description the nature of the case will allow, as, "The body of a man whose name is unknown, but whose person is well known, and who is employed as the drover of cattle, wears a white hat and has lost his right eye:" 1 Chit. C.L. 39; 1 Hale, P. C. 577; *Hoye* v. *Bush*, 1 M. &. G. 775.

A warrant to apprehend, leaving a blank for the christian name of the person to be apprehended, and giving no reason for omitting it, but describing him only, as, the son of J. S. L.

Warrant to apprehend parties must be under the hand and seal of Justice—to whom addressed.

(it appeared that J. S. L. had four sons all living in his house) and stating the charge to be for assaulting A., without particularizing the time, place, or any other circumstances of the assault, is too general and unspecific: *Rex.* v. *Hood*, 1 M. C. C. 281.

The warrant should not be left in blank to be filled in afterwards by the officers or party, and if the name of the party or the officer be inserted without authority, after the issuing of the warrant, the arrest will be illegal, and the person executing it, will not be protected in proceeding under it.

Direction to Apprehend.—Return of Warrant.

The warrant shall order the person or persons to whom it is directed, to apprehend the offender and bring him before the Justice or Justices issuing the warrant, or before some other Justice or Justices of the Peace for the same territorial division, to answer to the charge contained in the information, and to be further dealt with according to law.

SECTION 13–18.

Issue of Summons—Requisites.

13. *See* section and remarks under section 2.

Service of summons—by whom to be served—manner of service.

14. Every such Summons shall be served by a Constable or other Peace Officer upon the person to whom it is directed, by delivering the same to the party personally, or if he cannot conveniently be met with, then by leaving the same for him with some person at his last or usual place of abode.

Proof of service—by whom and how made.

15. The Constable or other Peace Officer who serves the same shall attend at the time and place, and before the Justice or Justices in the Summons mentioned, to depose, if necessary, to the service of the Summons.

Summoned Party not Attending.

16. *See* section and remarks under section 2.

Warrant to Apprehend Party.

17. *See* section and remarks under section 12.

18. It shall not be necessary to make the Warrant returnable at any particular time, but the same may remain in force until executed. Warrant may remain in force until executed.

The warrant of a magistrate is not returnable at any particular time, and it continues in force until it is fully executed and obeyed.

The precise time, when the party is to be brought before the magistrate for examination, is never stated. It is otherwise where a summons is issued, (see section 13).

SECTIONS 19 AND 20.

19. Such Warrant may be executed by apprehending the offender at any place in the Territorial Division within which the Justice or Justices issuing the same have jurisdiction, or in case of fresh pursuit, at any place in the next adjoining Territorial Division, and within seven miles of the border of the first mentioned Territorial Division, without having the Warrant backed, as hereinafter mentioned. How and where a warrant may be executed—Fresh pursuit.

20. In case any Warrant be directed to all Constables or other Peace Officers in the Territorial Division within which the Justice or Justices have jurisdiction, any Constable or other Peace Officer for any place within such Territorial Division may execute the Warrant at any place within the jurisdiction for which the Justice or Justices acted when he or they granted such Warrant, in like manner as if the Warrant had been directed specially to such Constable by name, and notwithstanding the place within which such Warrant is executed be not within the place for which he is Constable or Peace Officer. On what conditions constables, etc., may execute warrant.

On what Conditions Constables may Execute Warrant.

By section 20, the execution by a constable is not confined to a constable within his peculiar district, provided the execution is within the territorial division or county, in which the magistrate has jurisdiction, and the constable such within the district or county.

Persons from another county coming to assist the constables of the county, who make the arrest, are entitled to like protection; *R.* v. *Chasson*, 3 Pug. 546, N. Bk.

Shewing Warrant—Right of Party—Known Officer.

On what conditions constables, etc., may execute warrant.

In case of a public officer or bailiff recognized and publicly known as such acting in his own district, his authority is considered as a matter of notoriety, and upon this ground, though the warrant by which he was constituted bailiff be demanded, he need not shew it, and it is sufficient if he notify that he is the constable and arrests in the Queen's name, but it is otherwise in the case of a writ or process against the party; both a public and private bailiff, where the party submits to the arrest and demands it, are bound to show at whose suit, for what cause and out of what court the process issues and where returnable, (see *Golliard* v. *Laxton*, 2 B. & S. 363); but if he resists immediately, and by his own wrongful act prevents the officer from doing his duty, it will be no excuse, that he did not tell the party.

The officer is never required to part with the possession of the warrant.

In cases of arrest authorized to be made without warrant, it is sufficient for a constable to state merely that he arrests the party in the Queen's name, but a private person in general must state, if required, the cause of arrest to the party.

Breaking Open Doors—Right to.—See Ante.

Arrest—Duty of Officers on Making.

When the officer has made his arrest, he is to take the party before the Justice who issued the warrant, either before the Justice who issued the warrant, or some other Justice or Justices having jurisdiction over the person and offence, according to the import of the warrant, the power of election is vested in the officer, not in the prisoner.

If, however, the time be unreasonable, as in or near the night, whereby he cannot attend the Justice, or if there be danger of a rescue, or the party be ill, and unable at present to be brought, he may, as the case shall require, detain him in a house till the next day or until it may be reasonable to bring him: 2 Hale, 119, 120. On what conditions constables, etc. may execute warrant.

Unless under such exceptional cases, the officer is bound to carry the party accused before the magistrate immediately: *Wright* v. *Court*, 4 B. & C. 596.

Where the charge is of a trifling nature, and the defendant is of good repute, and no probability of his absconding, the officer sometimes takes the word of the party for his appearance before the magistrate, after having arrested him, and if in such a case, the party should fail to keep his promise, there is no well founded reason why a second arrest should not be made on same warrant, which remains in force, until executed, and obeyed: Peake's Reports, 234; Bac. ab. Constable D.

If an escape is made without the concurrence of the officer, the defendant may be retaken within the territorial division, as often as he escapes, upon fresh pursuit, although he were out of view, and at any place in the next adjoining county, within seven miles of the border of first named territorial division, without having the warrant backed.

Distance from Territory.

The distance would be measured in a straight line, (in the absence of any prescribed measurement,) as from point to point, as the crow flies: *Reg.* v. *Inhabitants of Walden*, 9 Q. B. 76. If after a departure by the permission of the constable, the party returns into his custody, he

On what conditions constables, etc., may execute warrant.

may lawfully detain him in pursuance of the original warrant.

When the prisoner is brought before a magistrate, he is still considered to be in the custody of the officer, until he has been discharged, bailed or committed to prison: 2 Hale, 120.

SECTIONS 21 AND 22.

No objection to be allowed for alleged defects in form or substance.

21. No objection shall be taken or allowed to any Summons or Warrant for any defect therein, in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecution, before the Justice or Justices who takes the examination of the witnesses in that behalf as hereinafter mentioned.

See remarks under section 11.

If variance appears important the Justices may adjourn the case.

22. But if it appears to the Justice or Justices that the party charged has been deceived or misled by any such variance, such Justice or Justices, at the request of the party charged, may adjourn the hearing of the case to some future day, and in the meantime may remand the party, or admit him to bail as hereinafter mentioned.

See remarks under section 11.

SECTION 23.

Backing warrants—regulations respecting—effect of backing.

23. If the person against whom any Warrant has been issued, cannot be found within the jurisdiction of the Justice or Justices by whom the same was issued, or if he escapes into, or is supposed or suspected to be, in any place within Canada, out of the jurisdiction of the Justice or Justices issuing the Warrant, any Justice of the Peace within the jurisdiction of whom the person so escapes, or in which he is or is suspected to be, upon proof alone being made on oath or affirmation of the handwriting of the Justice who issued the same, without any security being given, shall make an endorsement (K) on the Warrant, signed with his name, authorizing the execution of the Warrant within the jurisdiction of the Justice making the endorsement, and such endorsement shall be sufficient authority to the person bringing such Warrant, and to all other persons to whom the same was originally directed, and also to all Constables and other Peace Officers of the Territorial Division where the Warrant has been so endorsed, to execute the same in such other Territorial Division, and to carry the person against whom the Warrant issued, when apprehended, before the Justice or Justices of the Peace who first issued the Warrant, or before some other Justice or Justices of the Peace for the same Territorial Division, or before some Justice or Justices of the Territorial

Division, in which the offence mentioned in the Warrant appears therein to have been committed.

Backing warrants—regulations respecting—effect of backing.

It will be observed that section 23, refers to crimes committed as in section 1, mentioned, and the arrest is confined to persons found in C[illegible]a. The right as between independent nations to arrest or demand the surrender of fugitives from justice, depends on treaty obligations. The backing of the warrant by a Justice is purely ministerial, and the Justice who issues the warrant, is responsible for an arrest under it, although it be backed and executed in a county other than that in which it was issued.

The warrant, although backed, is still the warrant of the magistrate who first issued it. The act of "backing" has no reference to the legality or illegality of the warrant, and the m[illegible]trate who backs it, is not subject to any ri[illegible]ich may arise from its execution: *Clark* v. *Wood*, 2 Ex. 394.

The section does not limit the backing of warrants, so that if the warrant is backed in one county and the party cannot be found in same, it may be again backed in another county and remains good to arrest the party should he be in any of the counties, or should return to first county.

SECTIONS 24-26.

Duty of constable in cases of arrest.

24. If the prosecutor or any of the witnesses for the prosecution be then in the Territorial Division where such person has been apprehended, the Constable, or other person or persons who have apprehended him, may, if so directed by the Justice backing the warrant, take him before the Justice who backed the warrant, or before some other Justice or Justices for the same Territorial Division or place; and the said Justice or Justices may thereupon take the examination of such prosecutor or witnesses, and proceed in every respect in manner hereinafter directed with respect to persons charged before a Justice or Justices of the Peace, with an offence alleged to have been committed in another Territorial Division than that in which such persons have been apprehended.

Summoning witnesses to attend and give evidence —Justices power as to.

25. If it be made to appear to any Justice of the Peace, by the oath or affirmation of any creditable person, that any person within the Dominion is likely to give material evidence for the prosecution and will not voluntarily appear for the purpose of being examined as a witness at the time and place appointed for the examination of the witnesses against the accused, such Justice shall issue his summons (L 1) to such person, requiring him to be and appear at a time and place therein mentioned, before the said Justice, or before such other Justice or Justices of the Peace for the same Territorial Division as may then be there, to testify what he knows concerning the charge made against the accused party.

If summons be not obeyed warrant may be issued to compel attendance.

26. If any person so summoned neglects or refuses to appear at the time and place appointed by the Summons, and no just excuse be offered for such neglect or refusal, (after proof upon oath or affirmation of the summons having been served upon such person, either personally or left with some person for him at his last or usual place of abode), the Justice or Justices before whom such person should have appeared, may issue a Warrant (L 2), to bring such person, at a time and place to be therein mentioned before the Justice who issued the Sommons, or before such other Justice or Justices of the Peace for the same Territorial Division as may then be there, to testify as aforesaid, and the said Warrant may, if necessary, be backed as hereinbefore mentioned, in order to its being executed out of the jurisdiction of the Justice who issued the same.

By Act, 39 Vic. c. 36, any witness duly subpœnaed to attend and give evidence at any criminal trial before any Court of Criminal Jurisdiction, shall be bound to attend and remain in attendance throughout the trial, and in default thereof, the Judge may cause witness to be arrested in order to give evidence and also to answer for his default. This Act specially refers to trials before the Court to which party is bound to take his trial; but as it may be necessary in preliminary proceedings in indictable offences to have the attendance of witnesses, power is given to have them brought up by warrant, and the same provisions as to backing the warrant to arrest the offender, are applicable to the case of warrants against witnesses.

The party to be summoned is one likely to give evidence for the prosecution.

If summons be not obeyed warrant may be issued to compel attendance.

The expenses of witnesses on the part of the prosecution, are usually provided for by special Act, and all witnesses as are bound over by recognizance to appear on the trial.

If the party desired as a witness does not attend as a witness, as may be the case from want of means of conveyance, the bringing up by warrant must provide for a conveyance, and there does not seem to be any power vested in the magistrate to punish him for refusal to obey the summons.

A witness subpœnaed to attend and give evidence on the trial before the Court to which party is bound over, are not exempted from attachment on the ground that their expenses were not tendered at the time of the service of the subpœna, although the Court would have good reason to excuse them for not obeying the summons, if in fact they had not the means of defraying the expenses of the journey: Roscoe on Ev. 113.

SECTION 27.

27. If the Justice be satisfied by evidence upon oath or affirmation that it is probable the person will not attend to give evidence unless compelled so to do, then, instead of issuing such Summons, the Justice may issue his Warrant (L 3) in the first instance, and the Warrant, if necessary, may be backed as aforesaid.

In certain cases warrant may issue for witness instead of summons.

Under this section, power is given to the magistrate to issue a warrant instead of a summons, but the Justice should be satisfied of the necessity of doing so, and require the oath of prosecution or other party to warrant him in so doing.

A magistrate has no right to issue a warrant for the apprehension of a person to attend to find bail for his appearance as a witness at the Assizes, although it is sworn, that the witness is

material and has refused to obey a summons which had been previously issued to give evidence before the magistrate: *Evans* v. *Rees*, 4 P. & D. 32, 12 Ad. & Ell. 55.

SECTION 28.

Persons appearing on summons and refusing to be examined may be committed.

28. If on the appearance of the person so summoned, either in obedience to the Summons or by virtue of the Warrant, he refuses to be examined upon oath or affirmation concerning the premises, or refuses to take such oath or affirmation, or having taken such oath or affirmation, refuses to answer the questions concerning the premises then put to him without giving any just excuse for such refusal, any Justice of the Peace then present and there having jurisdiction, may, by Warrant (L 4), commit the person so refusing to the Common Gaol or other place of confinement, for the Territorial Division where the person so refusing then is, there to remain and be imprisoned for any time not exceeding ten days, unless he in the meantime consents to be examined and to answer concerning the premises.

In order to avoid any question as to the power in the magistrate to commit a witness to prison who refuses to answer questions, he ought to be served with a summons, as the Justice acts in the matter of examination, more, ministerially than judicially, it may be doubtful how far the power to commit is vested in him as an incident to his proceedings.

A witness should not be committed in any case for refusing to answer questions which are wholly irrelevant to the matter in question, or when he has privilege to refuse to answer.

Privilege.

A witness cannot refuse to answer any question relevant to the matter in issue, the answering of which has no tendency to accuse himself and to expose him to a penalty or forfeiture of any nature whatsoever, by reason only, or on the sole ground, that the answering of such questions may establish that he owes a debt, or is otherwise subject to a civil suit, either at the instance of Her Majesty, or any other person or persons.

The danger in such cases must not be merely imaginary, but it must be real and appreciable, and there must appear that there is reasonable ground to apprehend danger to the witness from his being compelled to answer. *R.* v. *Boyes*, 1 B. & S. 311.

Persons appearing on summons and refusing to be examined may be committed.

That the witness will be subjected to a criminal charge however punishable, is clearly a sufficient ground for claiming the protection, and the witness is the person to exercise his discretion, not the Judge, but the witness ought to satisfy the court, that the effect of the question will be to endanger him; the witness should pledge his oath, that he will incur risk by answering the question, and the Judge exercises his discretion whether he will grant the privilege or not, judging from the circumstances of the case and the nature of the evidence, which the witness is called upon to give whether there is reasonable ground to apprehend danger to the witness from his being compelled to answer. Roscoe Cr. Ev. 152, citing *R.* v. *Boyes*, 1 B. & S. 311.

Husband and Wife.

It was held at one time that a husband or wife was an incompetent witness to prove any fact which might have a tendency to criminate the other, but this is not the law now. Where the husband or wife are actually on trial, they are incompetent witnesses either for or against each other, but where the guilt of the husband or wife is not the subject of inquiry, though they may have been implicated in the transaction, neither are incompetent to give evidence, although the answers may tend to affect the one or the other.

This does not affect the cases of informations against wife or husband in cases of personal

Persons appearing on summons and refusing to be examined may be committed.

violence, where either one or the other is informant, in such cases, one is admitted as a witness against the other. So also a wife may swear the the peace against her husband.

But, though the husband and wife be competent, neither should be compelled to give evidence which tends to criminate the other, and where the witness in such a case throws himself on the protection of the court, on the ground that the answer to the question put, might criminate the other, the witness will generally receive the protection. *R.* v. *All Saints*, 6 M. & S. 194.

No husband shall be compellable to disclose any communication made to him by his wife during the marriage, and no wife shall be compellable to disclose any communication made to her by her husband during the marriage.

Where several persons are indicted together, the wife of one prisoner cannot be called to give evidence for or against another. See *R.* v. *Smith*, 1 Moo. C. C. 289; *R.* v. *Thompson*, L. R., 1 C. C. R. 377.

Three prisoners were on their trial, two for larceny and one for receiving; it was held, that the wife of one of the two could not be called to give evidence for the one charged with receiving, although the charge against him was contained in a separate count. The preponderance of authority is in favor of the proposition that in no case where the husband is on his trial can the wife be called as a witness, and *vice versa*. Roscoe Cr. Ev. 127.

Privilege on the Ground of Confidence.

This privilege is confined to professional legal advisers. Other professional persons, whether physicians, surgeons or clergymen have no such

privilege: *R.* v. *Gilham*, Ry & M. C. C. R. 198. A person who acts as an interpreter between a client and his attorney will not be permitted to divulge what passed.

Persons appearing on summons and refusing to be examined may be committed.

Accomplice.

The testimony of an accomplice who is willing to give testimony may be taken. By the policy of the Common Law a witness is not bound to criminate himself. The evidence of an accomplice ought to be received with much caution, even when on a preliminary examination before a Justice, and his evidence ought to be corroborated before much weight should be given to it, although a conviction on the testimony of an accomplice uncorroborated is legal: *R.* v. *Attwood*, 1 Leach, 464; 1 Hale, P. C. 304; *R.* v. *Jones*, 2, Camp. 132.

If an accomplice is charged in the same indictment, he cannot be called until after he has been acquitted or convicted, or a *nolle prosequi* has been entered: *R.* v. *Payne*, L. R., 1 C. C. R. 349.

Privilege on Ground of Public Policy.

Disclosures made by informers or persons employed for the purpose, as under the Revenue laws and such like matters, to the Government, Magistracy, or Police, with the object of detecting and punishing offenders, are usually privileged communications, and the name of the informer kept secret, and not unnecessarily disclosed: *R.* v. *Hardy*, 24 How. St. Tr. 808.

So also all official communications affecting or relating to matters concerning the interests of the community at large, may be withheld, such as communications between the Governor and Law Officers of a colony; all State secrets and such like cannot be disclosed by a witness

Persons appearing on summons and refusing to be examined may be committed.

by compulsion. See *Wyott* v. *Gore*, Holt. N. P. 299; *Anderson* v. *Hamilton*, 2 Br. & Bing. 156-157, note b.

Witness Not Claiming Privilege.

If a witness, knowing his privilege, does not object but gives answers to questions, his answers are admissable as evidence against him, but not answers to questions, to which he objects, but as to which he is wrongly deprived of the benefit of his objection: *Smith* v. *Beadnell*, 1 Camp. 33. See also *R.* v. *Coote*, L. R. 4 P. C. 599. Where the cases are cited in illustration of above, the principles in above matters will apply to preliminary examinations before a Justice.

The several provisions in the Dominion have Laws regulating the competency and privilege of witnesses, in most part being re-enactments of the English Statutes relative to same.

The Dominion Act, 32-33 Vic. c. 29, s. 62, provides that "No person offered as a witness shall, by reason of any alleged incapacity from crime or interest, be excluded from giving evidence on the trial of any criminal case, or in any proceeding relating or incidental to such case;" and by s. 63, "Every person so offered shall be admitted and be compellable to give evidence on oath, or solemn affirmation, where an affirmation is receivable. Notwithstanding that such person has, or may have an interest in the matter in question, or in the event of the trial in which he is offered as a witness, or of any proceeding relating or incidental to such case, and, notwithstanding that such person so offered as a witness has been previously convicted of a crime or offence."

SECTION 29.

Examination of witnesses to be in the

29. In all cases where any person appears or is brought before any Justice or Justices of the Peace charged with any indictable offence, whether committed in Canada or upon the

high seas, or on land beyond the sea, and whether such person appears voluntarily upon Summons or has been apprehended, with or without Warrant, or is in custody for the same or any other offence, such Justice or Justices before he or they commit such accused person to prison for trial, or before he or they admit him to bail, shall, in the presence of the accused person, (who shall be at liberty to put questions to any witness produced against him,) take the statement (M) on oath or affirmation of those who know the facts and circumstances of the case, and shall put the same in writing, and such depositions shall be read over to and signed respectively by the witnesses so examined, and shall be signed also by the Justice or Justices taking the same. presence of accused—reading and signing of depositions.

It must be borne in mind that the depositions have not only to be signed by the Justice or Justices taking the same, but also by the witnesses examined in regard to the offence charged. The examination must also be in the presence of the accused, and if he desires it, he should not be denied the assistance of Counsel or Attorney.

If the original complaint or information and evidence taken before the warrant was issued, contains a complete case, it is the practice in England for the magistrate, after re-swearing the accuser and witnesses, to read over their former depositions in their presence, and to state to the prisoner, that he is at liberty to ask the prosecutor and witnesses any questions respecting the charge against him, and if he declines so doing the examinations are not again gone over, but a fresh jurat is made to them; and this even before a fresh magistrate; the papers are then signed by the parties deposing, and by the Justice by whom they are taken: 1 Chit. Cr. Law, 80; 1 Leach, 458.

30. The Justice or Justices shall, before any witness is examined, administer to such witness the usual oath or affirmation, which such Justice or Justices are hereby empowered to do; and if upon the trial of the person accused, it be proved upon the oath or affirmation of any credible witness, that any person whose deposition has been taken as aforesaid, is dead, or is so ill as not to be able to travel, or is Justice to administer oath—depositions of persons dying, absent, &c., how and when may be used.

Justice to administer oath—depositions of persons when dying, absent, etc.—how and when may be used.

absent from Canada, and if it be also proved that such deposition was taken in presence of the person accused, and that he, his Counsel or Attorney, had a full opportunity of cross-examining the witness, then if the deposition purports to be signed by the Justice by or before whom the same purports to have been taken, it shall be read as evidence in the prosecution without further proof thereof, unless it be proved that such deposition was not in fact signed by the Justice purporting to have signed the same.

Swearing the witness after the deposition is taken, is improper and censurable. The witness should first be sworn before giving any testimony, and if the magistrate was to commit without an oath made before him, he would be liable to an action if the prisoner was acquitted. 1 Hale, P. C. 586; 1 Leach. 202, 309.

The magistrate reduces the examination of each of the deponents to writing in a plain and intelligible manner.

All the facts and circumstances should be inserted which are necessary to prove the crime, and the *corpus delicti* should appear on the face of the depositions, for, if this be properly done, though the commitment should be informal, the prisoner will not be entitled to be discharged on the ground of defect in the *mittimus*. 1 Ch. Cr. L. 79; 3 East. R. 157.

Signing Deposition by Justice.

In the case of the *Queen* v. *Parker*, L. R., 1 C. C. R. Vol. I, 225, overruling *Reg.* v. *Richards* (4 F. & F. 860), it was held that it was not necessary that each deposition should be signed by the Justice taking it; and therefore, where a number of depositions taken at the same hearing on several sheets of paper were fastened together, and signed by the Justices taking them once only at the end of all the depositions, in the form given in the schedule; it was held that one of these depositions was admissible in evidence

under sect. 17 of Act, 11-12 Vic., c. 42, (which contains similar provisions as section 30 of Dominion Act), after the death of the witness making it, although no part of it was on the sheet signed by the Justice.

Justice to administer oath—depositions of persons dying, absent, etc.—how and when may be used.

It will be observed that the form M to section 29, states: "The above depositions of C. D. and E. F. were taken and sworn before me," etc., and the court, in case cited, thought that the schedule or form seemed to make the signature of the Justice apply to all the depositions taken; and the court held that the deposition in such case was properly admitted in evidence, the witness being deceased. In Act 32-33 Vic. c. 29, s. 58, it is provided, that depositions taken on any charge may be read in prosecutions of others, the words of such section are, "Depositions taken in the preliminary or other investigation of any charge against any person, may be read as evidence in the prosecution of such person for any other offence whatsoever, upon the like proof and in the same manner, in all respects, as they may, according to law, be read in the prosecution of the offence with which such person was charged, when such depositions were taken."

In order to render a deposition of any kind admissible in evidence, in any case it must be proved to have been formally taken. It must appear to have been taken under oath; that the party against whom it is tendered had opportunity of examining the witness who made it, and all the other requirements of the statute must be proved by the party tendering the evidence, to have been complied with.

If the deposition is admissible at all, it is admissible for all the purposes for which ordinary

Justice to administer oath,—depositions of persons dying, absent, etc., how and when may be used.

evidence is admissible, and may be used for or against the prisoner.

It may be used before the Grand Jury in the same way as before the petit jury. *R.* v. *Clements*, 2 Den. C. C. 251; Roscoe on Cr. Ev. 75.

It is of the utmost importance that the magistrate sees that all the requisites of the statute have been complied with, in respect to taking depositions; he should see that the oath, or affirmation where such is allowed, has been properly administered in the first instance; that the deposition is properly signed by himself and by the witness; if the deposition is written on more than one sheet of paper, and only the last sheet signed, it should appear that all the sheets were annexed properly together at the time the magistrate signed the last sheet; the mode by which they are attached will not be material, if they appear to have been attached together at the time of the signature. *Reg.* v. *Parker*, L. R., Crown Cases, 1 Vol. 225.

Where the depositions were on separate sheets, but under the one caption, "Examination of J. J. Hill and others, in the presence of the prisoner," etc., and the whole were attached together, not at the time of the signature, but subsequently by the magistrate's clerk. Pollock, C. B., admitted them in evidence. *R.* v. *Lee*, 4 F. & F. 65.

In cases where the prisoner calls witnesses before the magistrate in answer to the charge, they should be heard, and their evidence taken down; and if the prisoner be committed for trial, the depositions of his witnesses should be transmitted together with the depositions in support of the charge: 2 C. & K. 845.

Nothing should be returned as a deposition against the prisoner, unless the prisoner had an

opportunity of cross-examining the person making the deposition. *R.* v. *Arnold*, 8 C. & P. 621.

Justice to administer oath,—depositions of persons dying, absent, etc., how and when may be used.

Magistrates should return all the depositions that have been taken at all the examinations that have taken place, respecting the offence which is the subject of a trial, *R.* v. *Simon*, 6 C. & P. 540; and whether for the prosecution or on the part of the prisoner: *R.* v. *Fuller*, 7 C. & P. 269.

The examination of the prosecutor and his witnesses, should be of the most searching character, and the magistrate ought to continue his inquiries as long as anything of importance can be elicited from the witnesses respecting the guilt of the prisoner, or which may tend to implicate accomplices or others not yet arrested; this is also important that the witnesses may be tied down to their first narration, and not be left open to those impressions either of pity or revenge, which may affect them between the examination and trial of the accused.

If the examination has been taken in conformity with the provisions of the statute, it proves itself in cases in which the depositions are admissible, the words of the statute being, "It shall be read as evidence in the prosecution without further proof thereof, unless it be proved that such deposition was not in fact signed by the Justice, purporting to have signed the same."

If there are any erasures or interlineations they should be explained by some one present at the time.

The prisoner is not to be precluded from shewing, if he can, that omissions have been made to his prejudice, for the examination is used against him as an admission, and admissions must be taken as they were made, the

Justice to administer oath,—depositions of persons dying, absent, etc., how and when may be used.

whole together, when relating to a particular matter, not in pieces, nor with partial omissions, even the prisoner's signature ought not to stop him from proving, if he can, such omissions: 8. Phil. Ev. 118, 10 Ed.

A magistrate committing for re-examination, ought at each examination to subscribe the depositions then taken, (the witnesses having first signed) and not to defer the subscription by himself and the witnesses, till he determines upon committing: *Reg.* v. *Mayor of London*, 5 Q. B., 555.

SECTIONS 31-32.

After examination of the accused, Justice to read depositions taken against him, and caution him as to any statement he may make.

31. After the examinations of all the witnesses for the prosecution have been completed, the Justice, or one of the Justices by or before whom the examinations have been completed, shall, without requiring the attendance of the witnesses, read or cause to be read to the accused, the depositions taken against him, and shall say to him these words, or words to the like effect: "Having heard the evidence, do you wish to say "anything in answer to the charge? You are not obliged to "say anything unless you desire to do so, but whatever you "say will be taken down in writing, and may be given in evi- "dence against you upon your trial;" and whatever the prisoner then says in answer thereto shall be taken down in writing (N) and read over to him, and shall be signed by the Justice or Justices, and kept with the depositions of the witnesses, and shall be transmitted with them as hereinafter mentioned.

Explanations to be made to the accused party.

32. The Justice or Justices shall, before the accused person makes any statement, state to him and give him clearly to understand that he has nothing to hope from any promise of favor, and nothing to fear from any threat which may have been held out to him to induce him to make any admission or confession of his guilt, but that whatever he then says may be given in evidence against him upon his trial, notwithstanding such promise or threat.

On the examination there are three modes of conduct for the defendant to adopt: to disclose his defence; to remain silent; or to confess his guilt.

If he has been falsely accused, he may prefer adopting the first course to being confined in

prison until the sitting of the Court, or calling on his friends to bail him; but if it is doubtful whether his defence would make such an impression as to secure his immediate discharge, it may be prudent to reserve it to the time of trial, and decline answering any questions, or lastly, if his guilt is manifest and there is small chance of acquittal, he had better make a frank confession.

Explanations to be made to the accused party.

Prisoner to be Cautioned before Making Statement.

The magistrate must before the prisoner makes any statement explain to him that he has nothing to hope from any promise of favour, and nothing to fear from any threat, as directed in section 32. He should be directed that he is not bound to accuse himself, and that any admission made may be used against him at his trial.

No improper influence either by threat, promise or representation, ought to be employed, for however slight the inducement may have been a confession so obtained cannot be received in evidence, on account of the uncertainty and doubt, whether, it was not made rather from a motive of fear or interest, than from a sense of guilt: 1 Leach, 263, 291, 386; 2 Hale, 284; *Rex* v. *Thornton*, 1 Ry. & M. C. C. 27; *Rex.* v. *Swatkins*, 4 C. & P. 550; *Rex* v. *Dunn*, 4 C. & P. 543; *Rex* v. *Davis*, 6 C. & P. 177; *Rex* v. *Ellis*, 1 Ry. & M. 432.

The prisoner ought not to be required to swear, and he ought not to be questioned or examined by the magistrate like a common witness, although where questions have been put and answers elicited, the examination would not be inadmissable, unless under special circumstances of pressure on the party, or threat or promise by the magistrate. In the case of *Rex* v. *Ellis*, 1 Ry. & M.

Explanations to be made to the accused party.

432, where questions were put by the magistrate and where the prisoner claimed the right of his attorney's attendance and assistance, which the magistrate refused to permit, Littledale, J. suggested that, the case should not be further pressed, which was assented to by the counsel for the prosecution.

The Dominion Statute does not authorize the magistrate to take the examination of the prisoner (as by former English Statutes was allowable) but to take his statement if the prisoner sees fit to make it.

The statement must be entirely voluntary, and must be taken down in writing; is to be read over to him, and is to be signed by the Justice, and kept with the depositions of the witness, and transmitted with them to the proper officer.

The statement should be tendered to the prisoner to sign: see form N. but whether signed or not by him, it is still evidence against him, nothing being said in sections 31-32, about signature by the prisoner; but it must be signed by the Justice, and is evidence against the prisoner without further proof, if read over to him and signed by the magistrate, and if having been cautioned and explanations made to the prisoner, as by sections 31-32 directed, and the prisoner making his statement voluntary, the same will be evidence against him, notwithstanding promises or threats may have been previously used, but which have not in any way induced him to make his statement after the caution given.

The statement is evidence against the prisoner only. In *R.* v. *Haines*, 1 F. & F. 86; Crowder, J., refused to allow the prisoner's statement, which had not been put in evidence by the counsel for the prosecution, to be put in on behalf

of the prisoner, and it is evidence only against the prisoner who makes it.

SECTION 33-34.

33. Nothing herein contained shall prevent any prosecutor from giving in evidence any admission or confession, or other statement made at any time by the person accused or charged, which by law would be admissible as evidence against him. Not to prevent giving in evidence confession, etc.

34. Upon the trial of the accused person, the examinations may, if necessary, be given in evidence against him without further proof thereof, unless it be proved that the Justice or Justices purporting to have signed the same, did not in fact sign the same. Examinations may be given in evidence against accused party

Any voluntary admission or confession by a defendant, is evidence against him at Common Law, whether it be made to a private person, or to a magistrate, or one having authority; but no parol evidence of a confession can be given, where the confession has been taken down in writing, for the general rule applies, that it is not the best evidence, and before parol evidence can be given of a previous declaration, before a magistrate, proof must first be given that it was not taken down in writing; *R.* v. *Huet*, 2 Leach, 821; *Philips* v. *Winburn*. 4 C. & P. 273.

But a written examination before a magistrate will not exclude evidence of a parol declaration, which has not been taken down in writing.

So it has been held, that remarks or statements made by a prisoner, after the commencement of the investigation before the magistrate, and whilst the witnesses are giving their testimony, are receivable in evidence, although the prisoner's examination is afterwards taken down in writing. See Roscoe, Cr. Ev. 9 Ed. 60.

If a prisoner during the examination of the witnesses against him before the magistrate, make an observation, parol evidence may be given of such observation, if it is shewn that

Examinations may be given in evidence against accused party.

the magistrate only took the evidence of the witnesses and the statement of the prisoner, after the evidence against him was concluded: *Rex.* v. *Spilsbury*, 7 C. & P. 187.

What is said by a prisoner at any time during the preliminary inquiry before a magistrate previous to the final examination, is evidence which must be proved in the usual way by a person who heard it, or by a memorandum acknowledged by the prisoner.

As to the statements made at the final examination when the prisoner is called upon, if it is returned in a form which is available under the Statute, this return is the only evidence of it exclusive of all parol testimony. If, however, from some defect or informality the return is not available, then what is said by the prisoner on the occasion may be proved in the usual way: Roscoe, Cr. Ev. 9 Ed. 62.

A confession made under such circumstances, which do not bring it within the Statute, stands as a confession at Common Law, and receivable in evidence as such.

If a prisoner admits the examination to be correct, the examination itself may be read in evidence; but, if the prisoner declines to sign it, or does not admit it to be correct, the written examination cannot be read in evidence, but it may be used to refresh the memory of a witness who may state what the prisoner said.

The point decided in such cases seems to be, that an examination, neither assented to as correct, nor signed by the prisoner, is not admissible as an examination duly taken under the Statute by a magistrate.

Any voluntary statement made by a prisoner before a magistrate and taken down in writing,

though inadmissible as an examination, may be proved by the person who took it down, he refreshing his memory by the written paper.

Examinations may be given in evidence against accused party.

On the trial of a prisoner who has made before a magistrate a voluntary confession of his guilt, previous to the conclusion of the evidence against him, which confession is taken down in writing and signed by the prisoner and attested by the magistrate's clerk, the proper course is for the clerk to give evidence of the prisoner's statements, refreshing his memory by the written paper: *Rex* v. *Bell*, 5 C. & P., 162.

It would be sufficient to call a person who was present to prove the taking of the examination and the signature of the magistrate, evidence being given that the examination was that of the prisoner.

36. The room or building in which the Justice or Justices take the examination and statement shall not be deemed an open Court for that purpose; and the Justice or Justices, in his or their discretion, may order that no person, shall have access to, or be, or remain in such room or building without the consent or permission of such Justice or Justices, if it appear to him or them that the ends of justice will be best answered by so doing.

Place of examination not an open Court, no person to remain without permission.

Whenever the magistrate deemed it expedient he may exclude spectators from the room. It may sometimes be necessary in order to prevent the imprudent disclosure of evidence, or for other reasons, to conduct the proceedings in private; as in the instances of offences committed by numbers in conjunction, when it is expedient to examine each person separately; it may be equally expedient, that no one of the confederates shall be informed of what has been disclosed during the examination of any other, which object might be frustrated, if a stranger had a right to be present, who might convey to the rest information of what has passed.

Place of examination not an open Court, no person to remain without permission.

In conducting the examination the magistrate acts ministerially and not judicially, and a prisoner is not entitled as a matter of right to have a person skilled in the law present as an advocate on his behalf, it being a preliminary investigation only, and not conclusive upon him. *Cox* v. *Coleridge*, 1 Barn. & Cr. 37; *Collier* v. *Hicks et al.*, 2 Barn. & Ad. 663.

Where the magistrate is acting judicially as in cases of summary convictions, the defendant may have Counsel on his behalf. (See post, summary convictions.)

To deny to the prisoner, the benefit of Counsel, learned in the law, is what is rarely done, and should not be done except for the best of reasons; but as observed by Lord Tenterden, C. J., in *Collier* v. *Hicks*, "The ends of Justice will be sufficiently well attained in these summary proceedings by hearing only the parties themselves and their evidence, without that nicety of discussion and subtlety of argument, which are likely to be introduced by persons more accustomed to legal questions."

It will be borne in mind that the examinations must be always in the presence and hearing of the accused, and in no case should he be absent whilst the examination of witnesses is being proceeded with.

Power to bind over the prosecutors and witnesses.

30. Any Justice or Justices, before whom any witness is examined, may bind by Recognizance (O 1) the Prosecutor, and every such witness, (except married women and infants) who shall find security for their appearance, if the Justice or Justices see fit, to appear at the next Court of competent Criminal Jurisdiction at which the accused is to be tried, then and there to prosecute, or prosecute and give evidence, or to give evidence, as the case may be, against the party accused, which Recognizance shall particularly specify the place of residence and the addition or occupation of each person entering into the same.

Power to bind over the prosecutors and witnesses

The Justice by this section, is authorized to bind over the witnesses and the prosecutor to appear against the prisoner at the Court to which he is bound over for trial, and section 39, authorizes the Justice to commit to gaol all witnesses refusing to enter into recognizance.

An exception is, however, made in the cases of married women and infants, they being under legal disabilities to enter into recognizance.

Whether the magistrate would have power to commit to prison the married woman or infant, if no security was given in their behalf to appear, may be doubtful, but it is evident, that such power should exist, as if no such power existed the ends of justice might be frustrated by the refusal of such witnesses to appear, and the section may be construed to mean, that although the married woman and infant cannot enter into recognizance, still they shall be required to find security for their appearance, or in default be committed. The magistrate's duty in cases of importance, would require him to get the husband of the woman to enter into recognizance with sureties for the wife's appearance, and in the case of infants, that some person on their behalf should do the same.

In case this cannot be done, and the magistrate considers it important that the evidence of such persons should be secured, it would seem necessary to the carrying out of the law, that the magistrate should have power to commit the married woman and infant to prison in order to secure their attendance as witnesses if it is apprehended that they may not attend otherwise.

It was held in *Bennet* v. *Watson*, 3 M. & S. 1. That a Justice of the Peace may commit a

Power to bind over the prosecutors and witnesses

femme covert who is a material witness upon a charge of felony brought before him, and who refuses to appear at the Sessions to give evidence, or to find sureties for her appearance.

The exceptional words in section 86, are however not in the English Act, but power is generally given to bind by recognizance the prosecutor and witnesses to appear, etc., and as doubts existed whether in cases of refusal to be bound over, the magistrate had power in any case to commit, the Statute 11 and 12 Vic., c. 42, s. 20: like the present Dominion Statute, makes express provision for commitment, but as the commitment is to be in cases, where the party refuses to enter into recognizance by persons capable of so doing, it still remains doubtful if the magistrate can lawfully commit a married woman or infant. But, as observed by Lord Ellenborough, C. J., in *Bennet* v. *Watson*, "The law intended that the witness should be forthcoming at all events, and it is a lenient mode which the Statute provided to permit the witness to go at large upon his own recognizance; however, that is only one mode of accomplishing the end which is the due appearance of the witnesses; therefore, where that mode as well as the end is frustrated as far as it can be by the witnesses' refusal, it seems but reasonable that the Justice should be warranted in committing, which is the only means left of securing the end."

SECTIONS 37-38.

Recognizances to be subscribed to by Justice, and notice given to persons bound thereby.

37. The Recognizance, being duly acknowledged by the person entering into the same, shall be subscribed by the Justice or Justices before whom the same is acknowledged, and a notice (O 2) thereof, signed by the said Justice or Justices, shall at the same time be given to the person bound thereby.

38. The several Recognizances so taken, together with the written information (if any), the depositions, the statement of the accused, and the Recognizance of Bail (if any) shall be delivered by the said Justice or Justices, or he or they shall cause the same to be delivered to the proper Officer of the Court in which the trial is to be had, before or at the opening of the Court on the first day of the sitting thereof, or at such other time as the Judge, Justice or person who is to preside at such Court or at the trial, orders and appoints. Recognizances to be transmitted to proper Court.

The form of taking the recognizance, as well of the prosecutor as of the witnesses is given. (O, 1.)

The Justice usually reads over the recognizance, to the party or parties to be bound, and asks him or them if they are content to be so bound; the recognizances are not signed by the party or parties, but the Justice affixes his signature to same, and a notice should be given in the form (O. 2), to the prosecutor and witnesses so bound over. Sufficient particularity should be observed in the party's name, place of residence, and occupation in filling in of recognizance. Magistrates should be careful to have all the papers relating to the case properly transmitted to the proper officer as soon as possible before the opening of the court, at which prisoner is to be tried.

These papers should be the information, examinations, statement of the accused, and other evidences, touching the offence charged, the recognizances and commitment, stating to what court prisoner is bound over.

The proper officer is the Clerk of the Crown, or chief Clerk of Court, or the Clerk of County Court, as the case may be, according to what court prisoner is so bound over to trial.

In District of Keewatin, provision is made that it shall not be necessary to transmit any recognizance to any Clerk of the Peace: see 39 Vic. c. 21; Schedule 33.

Witness refusing to enter into recognizance may be committed

39. If any witness refuses to enter into Recognizance, the Justice or Justices of the Peace by his or their Warrant (P 1,) may commit him to the common gaol for the Territorial Division in which the accused party is to be tried, there to be imprisoned and safely kept until after the trial of such accused party, unless in the meantime such witness duly enters into a Recognizance before some one Justice of the Peace for the Territorial Division in which such Gaol is situate.

Whenever the witness is willing to enter into recognizance, it is the duty of the Justice to receive such, and when the magistrate is notified to that effect, he should at once take the recognizance and liberate the witness, and this may be entered into before any one Justice of the Peace for the territorial division or county, and such recognizance should forthwith be filed with the other papers in the matter, with the proper officer.

See remarks on section 36.

Discharge for want of evidence.

40. If afterwards, for want of sufficient evidence in that behalf or other cause, the Justice or Justices before whom the accused party has been brought, do not commit him or hold him to bail for the offence charged, such Justice or Justices, or any other Justice or Justices for the same Territorial Division, by his or their Order (P 2) in that behalf, may order and direct the Keeper of the gaol where the witness is in custody, to discharge him from the same, and such Keeper shall thereupon forthwith discharge him accordingly.

If there is no sufficient evidence against the party, the Justice may verbally discharge the accused party if before him, and if he is in custody or on bail for his attendance, the Justice, by his order (P. 2), orders his discharge forthwith.

If from other cause than want of evidence the prisoner is to be discharged in like manner. Such other cause may exist where the prosecutor has withdrawn the information, in such cases in which he may lawfully do so.

In what cases a party may compound an offence is discussed in the case of *Keir* v. *Leeman*, 6 Ad. & Ell. N. S. 308. Discharge for want of evidence.

Where Lord Denham, C. J., says: "We shall probably be safe in laying it down, that the law will permit a compromise of all offences, though made the subject of a criminal prosecution, for which offences the injured party might sue and recover damages in an action."

In cases where indictment is made against a party and a true bill found, the consent of the Judge of Court should be had before any offence is compromised, but cases may and do occur, in which the magistrate would be justified in allowing the prosecution to drop at the instance of the prosecutor or informant, in such matters as may be a fit subject for legal compromise and so discharge the party accused.

SECTIONS 41, 42, 43, 44 AND 45.

Remanding Accused Party.

41. If from the absence of witnesses, or from any other reasonable cause, it becomes necessary or advisable to defer the examination or further examination of the witnesses for any time, the Justice or Justices before whom the accused appears or has been brought, may, by his or their Warrant (Q 1) from time to time, remand the party accused for such time as by such Justice or Justices in his or their discretion may be deemed reasonable, not exceeding eight clear days at any one time, to the common gaol in the Territoral Division for which such Justice or Justices are then acting. Power to Justice to remand the accused from time to time not exceeding eight days by warrant.

42. If the remand be for a time not exceeding three clear days, the Justice or Justices may verbally order the Constable or other person in whose custody the accused party may then be, or any other Constable or person to be named by the Justice or Justices in that behalf, to keep the accused party in his custody, and to bring him before the same or such other Justice or Justices as may be there acting, at the time appointed for continuing the examination. For three days only, may be by verbal order.

43. Any such Justice or Justices may order the accused party to be brought before him or them, or before any other Justice or Justices of the Peace for the same Territoral Division, at any time before the expiration of the time for which Accused may be brought up at an earlier day.

such party has been remanded, and the Gaoler or Officer in whose custody he then is, shall duly obey such order.

Party accused may be admitted to bail on recognizance.

44. Instead of detaining the accused party in custody during the period for which he has been so remanded, any one Justice of the Peace before whom such party has appeared or been brought, may discharge him, upon his entering into a Recognizance (Q 2, 3.) with or without a surety or sureties, at the discretion of the Justice, conditioned for his appearance at the time and place appointed for the continuance of the examination.

Non-appearance of accused on his recognizance—proceedings.

45. If the accused party does not afterwards appear at the time and place mentioned in the Recognizance, the said Justice or any other Justice of the Peace who may then and there be present, having certified (Q 4) upon the back of the Recognizance the non-appearance of such accused party, may transmit the Recognizance to the Clerk of the Court where the accused person is to be tried, or other proper officer appointed by law, to be proceeded upon in like manner as other Recognizances and such Certificate shall be deemed sufficient *prima facie* evidence of the non-appearance of the accused party.

Offender may be Examined in one Division and Committed in another.

46. *See* section and remarks under section 1.—*Ante.*

SECTIONS 47, 52 AND 56.

If evidence be not deemed sufficient it may be transmitted to the proper division with other papers, and party may be committed or bailed.

47. If the testimony and evidence be not, in the opinion of the Justice or Justices, sufficient to put the accused party upon his trial for the offence with which he is charged, then the Justice or Justices shall, by recognizance, bind over the witness or witnesses whom he has examined to give evidence as hereinbefore mentioned; and such Justice or Justices shall, Warrant (R 1), order the accused party to be taken before some Justice or Justices of the Peace in and for the Territorial Division where the offence is alleged to have been committed, and shall at the same time deliver up the information and complaint, and also the depositions and recognizances so taken by him or them to the Constable who has the execution of the last mentioned Warrant, to be by him delivered to the Justice or Justices before whom he takes the accused, in obedience to the Warrant, and the depositions and recognizances shall be deemed to be taken in the case, and shall be treated to all intents and purposes as if they had been taken by or before the last mentioned Justice or Justices, and shall, together with the depositions and recognizances taken

by the last mentioned Justice or Justices in the matter of the charge against the accused party, be transmitted to the Clerk of the Court or other proper Officer where the accused party ought to be tried, in the manner and at the time hereinbefore mentioned, if the accused party should be committed for trial upon the charge, or be admitted to bail.

Power to any two Justices to bail persons charged with felony not capital. In misdemeanor one Justice may bail.

52. When any person appears before any Justice of the Peace charged with a felony, or suspicion of felony, other than treason or felony punishable with death, or felony under the Act for the better protection of the Crown and of the Government, and the evidence adduced is in the opinion of such Justice, sufficient to put such accused party on his trial, but does not furnish such a strong presumption of guilt as to warrant his committal for trial, the Justice jointly with some other Justice of the Peace, may admit such person to bail upon his procuring and producing such surety or sureties a in the opinion of the two Justices will be sufficient to ensure the appearance of the person charged, at the time and place when and where he ought to be tried for the offence; and thereupon the two Justices shall take the Recognizances (S 1, 2,) of the accused person and his sureties, conditioned for his appearance at the time and place of trial, and that he will then surrender and take his trial and not depart the Court without leave; and when the offence committed or suspected to have been committed is a misdemeanor, any one Justice before whom the accused party appears may admit to bail in manner aforesaid;—And such Justice may in his discretion require such bail to justify upon oath as to their sufficiency, which oath the said Justice may administer, and in default of such person procuring sufficient bail, then such Justice may commit him to prison, there to be kept until delivered according to law.

If evidence deemed insufficient, party to be discharged, otherwise to be committed or bailed.

53. When all the evidence offered upon the part of the prosecution against the accused party has been heard, if the Justice or Justices of the Peace then present are of opinion that it is not sufficient to put the accused party upon his trial for any indictable offence, such Justice or Justices shall forthwith order the accused party, if in custody, to be discharged as to the information then under inquiry; but if in the opinion of such Justice or Justices the evidence is sufficient to put the accused party upon his trial for an indictable offence, although it may not raise such a strong presumption of guilt as would induce them to commit the accused for trial without bail, or if the offence with which the party is accused is a misdemeanor, then the Justices shall admit the party to bail as hereinbefore provided, but if the offence be a felony, and the evidence given is such as to raise a strong presumption of guilt, then the Justice or Justices shall by his or their warrant

If evidence deemed insufficient, party to be discharged, otherwise to be committed or bailed.

(T 1,) commit him to the common gaol for the Territorial Division to which he may by law be committed, or in the case of an indictable offence committed on the high seas or on land beyond the sea, to the common gaol of the Territorial Division within which such Justice or Justices have jurisdiction, to be there safely kept until delivered by due course of law; provided that in cases of misdemeanor the Justice or Justices who have committed the offender for trial, may, at any time before the first day of the sitting of the Court at which he is to be tried, bail such offender in manner aforesaid, or may certify on the back of the Warrant of committal, the amount of bail to be required, in which case any other Justice of the Peace for the same Territorial Division may admit such person to bail in such amount, at any time before such first day of the sitting of the Court aforesaid.

These sections provide for the remanding of the prisoner where it is necessary or advisable to defer the examination, or further examination of witnesses.

If the remand is for a time not exceeding three clear days, the prisoner may be verbally remanded, requiring in such case no written warrant, and the constable may keep such prisoner in his custody to be brought again before the magistrate at the time appointed, but if the remand is for a longer time than three clear days, the remand must be by warrant, (form Q 1) and must not be for a longer time than eight days, and is to be to the gaol or lock-up house of the territorial division or county, and this remand may be in either case from time to time as may be necessary, and section 44, provides that the prisoner instead of being detained in custody during the time of remand may be discharged upon entering into recognizance (Q 2, 3) with or without sureties, at the discretion of the Justice, conditional for his appearance at the time and place appointed for continuance of examination.

The magistrate must be careful that the remand is in accordance with the provisions of

the Statute, and that the prisoner be not committed for a longer time than is directed, otherwise the magistrate may be liable to an action for so doing. The object of the Statute is to prevent unnecessary delay in the examination, and that the prisoner may not be unduly confined.

If evidence deemed insufficient, party to be discharged, otherwise to be committed or bailed.

The full investigation of the case and final decision of the magistrate should depend on the circumstances of the case; either the prisoner or the accuser may be unable to bring forward the evidence immediately, and as the remand may be from time to time, the magistrate must exercise his discretion as to the necessity of frequent remands.

The magistrate having heard the examinations and ascertained that the party accused is not entitled to be completely discharged, is next to determine whether he will bail or commit him.

Power is given to any two Justices to bail persons charged with felony, other than felony punishable with death, or felony under the Act for the better protection of the Crown and Government.

When the Justice shall be of opinion, that the evidence adduced does not furnish such a strong presumption of guilt as to warrant a committal for trial, but that the evidence is sufficient to put party on his trial, the Justice, jointly with some other Justice of the Peace, may at once admit him to bail, upon his producing such surety or sureties, as in the opinion of the two Justices, will be sufficient to insure the appearance of the person charged at the time and place where he ought to be tried for the offence.

It frequently happens that the evidence on examination against an accused party is of a very slight and unsatisfactory character, or

If evidence deemed insufficient, party to be discharged, otherwise to be committed or bailed.

greatly weakened by the evidence produced on the part of the accused, but still affording a blush of suspicion to justify the magistrate in considering that there is some show of case to go to a jury; in such cases, the magistrate exercises a proper discretion in admitting the party accused to bail, (except in cases, excepted in section 52,) as bail in general answers the same purpose as commitment. When, however, the proof is evident, or the presumption of guilt is great, the Justices should not bail in cases of felony; if they admit to bail they thereby give their opinion that the presumption of guilt is slight, and not sufficient to warrant a commitment to prison.

If the party cannot find sureties, there is no other course but to commit.

In cases of misdemeanours one Justice is competent to admit to bail.

This section 52, is similar to the provisions in section 56, and by the provisions of such latter section, the Justices are required in cases therein mentioned to admit to bail the accused party, where no strong presumption of guilt exists as to require a committal to prison, or the case be one of misdemeanor, the words of section 56 being, "the Justices *shall* admit the party to bail."

In most of the inferior offences, bail will answer the same intention as commitment, and therefore it ought to be taken; but in offences of a capital nature no bail can be security equivalent to the actual custody of the person; 4 Black Com., c. 22; the same principle may be applicable to extreme cases of felony, where the evidence is clear and strong against the accused. In all cases the Judge or Magistrate, in cases where they may exercise discretion in their

power to admit to bail, must determine the right of the party accused to be so admitted by the circumstances of the case, and it is a matter thus left to discretion; and in cases under sections 52 and 56, the Magistrate is bound to admit to bail, except under the exceptional cases provided for in section 52.

If evidence deemed insufficient, party to be discharged, otherwise to be committed or bailed.

What bail may be called excessive must be left to the magistrate to determine on considering the circumstances of the case and of the accused. It requires the exercise of great judgment and firmness; the two extremes of demanding excessive bail and of accepting insufficient bail should be equally avoided; the nature of the offence and also the character and property of the party accused, should be taken in account. A person of wealth charged with a serious offence would forfeit his recognizance, if the amount were not such as would be oppressively large, when required of a poor and obscure individual.

It should never be so small as the circumstances of the party considered, may hold out an inducement for the accused to forfeit his recognizance, and should be determined from a regard to the nature of the alleged offence, its punishment, the standing and property of the person accused and such like circumstances, for a recognizance of bail is not designed as a satisfaction of the offence when it is forfeited and paid, but as a means of securing and compelling the attendance of the party and his submission to trial and punishment, which the law ordains for the offence, whilst it grants the indulgence of his liberty until the crime is fairly proved.

SECTIONS 48, 49 AND 50.

48. In case such accused party be taken before the Justice or Justice last aforesaid, by virtue of the said last mentioned constable

Expenses of

conveying accused.

Warrant, the Constable or other person or persons to whom the said Warrant is directed, and who has conveyed such accused party before such last mentioned Justice or Justices, shall upon producing the said accused party before such Justice or Justices and delivering him into the custody of such person as the said Justice or Justices direct or name in that behalf, be entitled to be paid his costs and expenses of conveying the said accused party before the said Justice or Justices.

Justice to furnish constable with proper receipt or certificate of receiving body & necessary papers.

49. Upon the Constable delivering to the Justice or Justices the Warrant, information (if any), depositions and recognizances, and proving on oath or affirmation the hand-writing of the Justice or Justices who has subscribed the same, such Justice or Justices before whom the accused party is produced, shall thereupon furnish such Constable with a Receipt or Certificate (R 2), of his or their having received from him the body of the accused party, together with the Warrant, information (if any), depositions and recognizances, and of his having proved to him or them, upon oath or affirmation, the hand-writing of the Justice who issued the Warrant.

Constable to be paid expenses by proper officer.

50. The said Constable, on producing such receipt or certificate to the proper Officer for paying such charges, shall be entitled to be paid all his reasonable charges, costs and expenses of conveying such accused party into such other Territorial Division, and of returning from the same.

The Justice in such cases, should ascertain the sum which ought to be paid to the constable or other person to whom warrant is directed, as also his reasonable expenses of returning, and should make an order on the proper officers of the place or county, for payment of such fees.

The Justice should furnish the constable with a receipt or certificate (R. 2), of his having received from him the body of the accused party together with the warrant and all other papers in the matter, and having proved, on oath or affirmation, before the Justice the handwriting of the Justice who issued the warrant; and the constable on producing such certificate shall be entitled to be paid all reasonable charges, costs and expenses of conveying such accused party

into such other territorial division or county and returning from the same.

SECTIONS 51, 52, 53, 54 AND 55.

51. If such Justice or Justices do not commit the accused party for trial, or hold him to bail, then the recognizances taken before the first mentioned Justice or Justices shall be void. Recognizances to be void where no committal.

Bailing party charged with Felony, not Capital—Bail in cases of Misdemeanor.

52. *See* remarks under section 47.

53. In all cases of felony, or suspicion of felony, other than treason or felony punishable with death or felony under the Act for the better protection of the Crown and of the Government, and in all cases of misdemeanor, where the party accused has been finally committed as hereinafter provided, any Judge of any Superior or County Court, having jurisdiction in the Districts or County, within the limits of which such accused party is confined, may, in his discretion on application made to him for that purpose, order such accused party or person to be admitted to bail on entering into Recognizance with sufficient sureties before two Justices of the Peace, in such amount as the Judge directs, and thereupon the Justices shall issue a warrant of deliverance (S 3,) as hereinafter provided, and shall attach thereto the order of the Judge directing the admitting of such party to bail. Superior or County Court Judge may admit to bail.

54. No Justices of the Peace, or County Judge shall admit any person to bail accused of treason or felony punishable with death, or felony under the Act for the better protection of the Crown and of the Government, nor shall any such person be admitted to bail, except by order of a Superior Court of Criminal Jurisdiction for the Province in which the accused person stands committed, or of one of the Judges thereof, or in the Province of Quebec, by order of a Judge of the Court of Queen's Bench or Superior Court; and nothing herein contained, shall prevent such Courts or Judges admitting any person accused of misdemeanor or felony to bail when they may think it right so to do. Superior Court only, to bail in certain cases.

55. In all cases where a Justice or Justices of the Peace admit to bail any person who is then in any prison charged with the offence for which he is so admitted to bail, the Justice or Justices shall send to or cause to be lodged with the keeper of such Prison, a Warrant of Deliverance (S 3,) under his or their hand and seal or hands and seals, requiring the said keeper to discharge the person so admitted to Justice bailing after committal, to issue a warrant of deliverance.

Justice bailing after committal, to issue a warrant of deliverance.

bail if he be detained for no other offence, and upon such Warrant of Deliverance being delivered to, or lodged with such keeper, he shall forthwith obey the same.

If the party is not ready with bail at the time he is apprehended and examined, and the offence is bailable, he may at any time be released from imprisonment on finding sureties, and after the recognizance is entered into, the Justice will send notice of the fact to the gaoler, in form of warrant of deliverance, (form S. 3) under his hand and seal.

See remarks under section 39.

There should be no objection to allowing the prisoner to remain a short and reasonable time before his final commitment in the custody of the officer, who will be careful not to suffer an escape, to afford the prisoner opportunity of procuring bail.

Party to be Discharged, Bailed, or Committed on Evidence.

56. *See* section and remarks under section 47.

SECTIONS 57 AND 58.

Conveyance of prisoner to prison—proceedings.

57. The Constable or any of the Constables, or other persons to whom any Warrant of Commitment authorized by this or any other Act or law is directed, shall convey the accused person therein named or described to the gaol or other prison mentioned in such warrant, and there deliver him, together with the Warrant, to the Keeper of such gaol or prison, who shall thereupon give the Constable or other person delivering the prisoner into his custody a Receipt (T. 2,) for the prisoner, setting forth the state and condition of the prisoner when delivered into his custody.

Copy of depositions—where defendant entitled to.

58. At any time after all the examinations have been completed, and before the first sitting of the Court at which any person so committed to prison or admitted to bail is to be tried, such person may require and shall be entitled to have, from the Officer or person having the custody of the same, copies of the depositions on which he has been committed or bailed, on payment of a reasonable sum for the same, not exceeding the rate of five cents for each folio of one hundred words.

This section (58), does not authorize the giving of depositions in cases of prisoners committed for re-examination, but only where the party has been fully committed for trial: *Reg* v. *Mayor of London*, 5 Q. B., 555. It has been held by Littledale, J., and Parke, B., that a prisoner is not entitled to a copy of his own statement, along with the depositions of witnesses, but as the whole of depositions and the statement of the prisoner are returned to the proper officer, it seems but reasonable that he should be entitled to have all copies of same, if desired.

Copy of depositions—where defendant entitled to.

The application for such copies should be made before the first day of trial at Court; provision is made by express words in the English Statute for the discretion of Judge to allow copies to be delivered, if no delay or inconvenience to trial is occasioned, notwithstanding there has not been a demand made for same before the first day of trial; and such course would probably be adopted without such provision by the Judge who is to try the case.

SECTIONS 59 AND 60.

59. Any Judge of the Sessions of the Peace for the city of Quebec or for the city of Montreal, or any Police Magistrate, District Magistrate or Stipendiary Magistrate, appointed for any Territorial Division, or any Magistrate authorized by the law of the Province in which he acts, to perform acts usually required to be done by two or more Justices of the Peace, may do alone whatever is authorized by this Act to be done by any two or more Justices of the Peace, and the several forms in this Act contained may be varied so far as necessary to render them applicable to such case.

Certain magistrates may act alone and have the powers conferred on two or more Justices of the Peace.

60. Every Coroner, upon any inquisition taken before him, whereby any person is indicted for manslaughter or murder, or as an accessory to murder before the fact, shall, in presence of the party accused, if he can be apprehended, put in writing the evidence given to the jury before him, or as much thereof as may be material, giving the party accused full opportunity of cross-examination; and the Coroner shall have authority to bind by recognizance all such persons as know or declare any thing material touching the manslaughter

Coroner—Duty of, in cases of murder or manslaughter—Recognizances, etc., transmission of.

Coroner — Duty of, in cases of murder or manslaughter— recognizances, etc., transmission of.

or murder, or the offence of being accessory to murder, to appear at the next Court of Oyer and Terminer, or Gaol Delivery, or other Court or term or sitting of a Court, at which the trial is to be, then and there to prosecute or give evidence against the party charged; and every such Coroner shall certify and subscribe the evidence, and all the recognizances, and also the inquisition before him taken, and shall deliver the same to the proper Officer of the Court at the time and in the manner specified in the thirty-eighth section of this Act.

What has already been said as to the admissibility of depositions, taken before the Justice of the Peace as evidence, is for the most part applicable to the depositions taken before a Coroner, except that this section (60), does not require the depositions to be signed by the witnesses, although it is desirable and proper that this should be done.

As to the admissibility of the depositions in evidence against the prisoner on his trial, it seems to be doubtful if they can be read in evidence against him, if not taken in his presence, and the prisoner had no opportunity of cross-examining the witness.

The authorities in favor of receiving such depositions in evidence are not satisfactory, and the same principle which excludes the depositions in inquiries in indictable offences ought also with equal, if not greater force, to apply to depositions taken before a Coroner, where the the trial is one of the highest nature. The presumption that the depositions were duly and impartially taken by the Coroner, ought not to outweigh the principle of right and privilege of the party to be present and cross-examine the witness before a deposition without such conditions being observed, should be received in evidence against him. The examinations before the Coroner should be confined and held appli-

cable to their proper object: see. 2 Phil. Ev. 109, 10 Ed; Roscoe, Cr. Ev. 78, 9 Ed.

Every care should be exercised by the Coroner in certifying and subscribing the evidence and also the inquisition before him taken, and he should be careful to deliver same to the proper officer of the court, as in section 38, as directed, as by neglect of these matters he is subject to be punished by fine. *See* section 63.

When party committed wishes to be bailed—proceedings.

61. When any person has been committed for trial by any Justice or Justices, or Coroner, the Prisoner, his Counsel, Attorney or Agent, may notify the committing Justice or Justices, or Coroner, that he will so soon as counsel can be heard, move one of Her Majesty's Courts of Superior Criminal jurisdiction for the Province in which such person stands committed or one of the Judges thereof, or in the Province of Quebec, a Judge of the Court of Queen's Bench, or of the Superior Court, or in the Provinces of Ontario or New Brunswick, the Judge of the County Court if it is intended to apply to such Judge under the fifty-third section of this Act, for an order to the Justices of the Peace, or Coroner for the Territorial Division where such Prisoner is confined, to admit such Prisoner to bail, whereupon such committing Justice or Justices, or Coroner, shall, with all convenient expedition, transmit to the office of the Clerk of the Crown, or the Chief Clerk of the Court, or the Clerk of the County Court or other proper officer (as the case may be,) close under the hand and seal of one of them, a certified copy of all informations, examinations, and other evidences, touching the offence wherewith the Prisoner has been charged, together with a copy of the warrant of commitment and inquest, if any such there be, and the packet containing the same shall be handed to the person applying therefor, in order to its transmission, and it shall be certified on the outside thereof to contain the information touching the case in question.

The provisions of this section are intended to expedite the admitting the prisoner to bail, and the magistrate, whenever he has received the notification of intention to apply to Court or Judge for such purpose, should at once prepare copies of all informations, examinations, and other evidence, together also with copy of warrant of commitment and inquest, if any

When party Committed wishes to be bailed— proceedings.

such there be, these papers should be enclosed in suitable envelope or covering, so that there may be no chance of tampering with the same; first, having been duly certified under the hand and seal of the Justice, as being true copies; this packet should then be closed and have endorsed on the outside thereof, a memorandum of what the papers relate to. This packet should be with all convenient speed transmitted to the office of the Clerk of the Crown, or Chief Clerk of the Court, or Clerk of the County Court, or other proper officer as the case may be, according to what Court prisoner has been committed for trial. The section is somewhat ambiguous as to whether the Justice has to transmit the packet, or whether it is sufficient to prepare it in proper form for transmission, and then on application of Counsel for prisoner, deliver it to the party applying. If the packet is ready for transmission, there would be no impropriety in delivering it at once to the party applying, and who gave the notice without first filing the same with the proper officer, as the object in having the packet, is to apply to Court or Judge with the papers to be considered as to prisoner's right to be bailed; if, however, the Justice has transmitted the packet, the duty of the officer to whom same has been so sent would be to hand the same to the proper person applying. In practice it is not unusual to lay before the Judge the original information and depositions, and order of commitment, where such can conveniently be done, and make application forthwith; in such case the papers would be subsequently filed with the proper officer.

SECTIONS 62, 63, 64, 65 AND 66.

Same order to be made as

62. Upon such application to any such Court or Judge as in the last preceding section mentioned, the same order touch-

ing the prisoner being bailed or continued in custody, shall be made as if the party were brought up upon a *Habeas Corpus*. upon *Habeas Corpus*.

63. If any Justice or Coroner neglects or offends in any thing contrary to the true intent and meaning of any of the provisions of the sixtieth and following sections of this Act, the Court to whose Officer any such examination, information, evidence, bailment, recognizance, or inquisition ought to have been delivered, shall, upon examination and proof of the offence, in a summary manner, set such fine upon every such Justice or Coroner as the Court thinks meet. Penalty on Justices and Coroners disobeying provisions of certain sections of Act.

64. The provisions of this Act relating to Justices and Coroners, shall apply to the Justices and Coroners not only of Districts and Counties at large, but also of all other Territorial Divisions and Jurisdictions. Provisions of Act to extend to all Justices and Coroners.

65. The word "Territorial Division," whenever used in this Act shall mean County, Union of Counties, Township, City, Town, Parish or other Juridical Division or place to which the context may apply. Interpretation—"Territorial Division."

66. The several forms in the Schedule to this Act contained, or forms to the like effect, shall be good, valid and sufficient in law. Forms in Schedule to Act—Validity of.

67. This Act shall commence and take effect on the first day of January, in the year of our Lord, one thousand eight hundred and seventy.

SCHEDULES.

(A) *Vide* ss. 1 *and* 9.

INFORMATION AND COMPLAINT FOR AN INDICTABLE OFFENCE.

Canada,
Province of ,
District *(or* County,
United Counties, *or as the case may be,)*
of

The information and complaint of C. D. of *(yeoman)*, taken day of , in the year of our Lord , before the undersigned, *(one)* of Her Majesty's Justices of the Peace, in and for the said District *(or* County, or *as the case may be,)* of who saith that (*etc., stating the offence.*)

Sworn (*or* affirmed) before [*me*] the day and year first above mentioned, at

J. S.

(B) *See* ss. 1, 17.

WARRANT TO APPREHEND A PERSON CHARGED WITH AN INDICTABLE OFFENCE.

Canada,
Province of
District (*or County*,
United Counties, *or as the case may be,*)
of

To all or any of the Constables or other Peace Officers in the District (*or* County, United Counties, *or as the case may be,*) of :

Whereas A. B., of (*laborer*), hath this day , been charged upon oath before the undersigned, (*one*) of Her Majesty's Justices of the Peace in and for the said District (*or* County, United Counties, *or as the case may be,*) of , for that he on , at , did (*etc., stating shortly the offence*); These are therefore to command you, in Her Majesty's

name, forthwith to apprehend the said A. B., and to bring him before (*me*) or some other of Her Majesty's Justices of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*,) of, to answer unto the said charge, and to be further dealt with according to law.

Given under (*my*) Hand and Seal, this day of at , in the District (*County, etc.*,) aforesaid.

J. S. [L. S.]

(C) *See* ss. 2, 13.

SUMMONS TO A PERSON CHARGED WITH AN INDICTABLE OFFENCE.

Canada,
District (*or* County, United Counties, *or as the case may be*,) of

To A. B. of , (*laborer*):

Whereas you have this day been charged before the undersigned (*one*) of Her Majesty's Justices of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*,) of for that you on , at , (*etc., stating shortly the offence*); These are therefore to command you, in Her Majesty's name, to be and appear before (*me*) on , at o'clock in the (*fore*) noon, at , or before such other Justice or Justices of the Peace of the same District (*or* County, United Counties, *or as the case may be*,) of , as may then be there, to answer to the said charge, and to be further dealt with according to law. Herein fail not.

Given under (*my*) Hand and Seal, this day of , in the year of Our Lord , at , in the District (*or* County, *etc.*,) aforesaid.

J. S. [L. S.]

(D) *See* ss. 2, 16.

WARRANT WHEN THE SUMMONS IS DISOBEYED.

Canada,
Province of
District (*or* County United Counties, *or as the case may be*,) of

To all or any of the Constables, or other Peace Officers in the said District (*or* County, United Counties, *or as the case may be*,) of

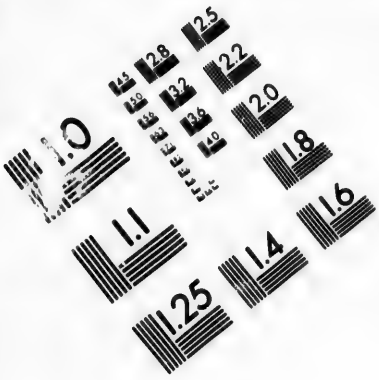
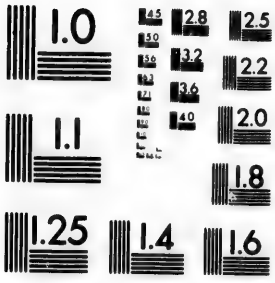
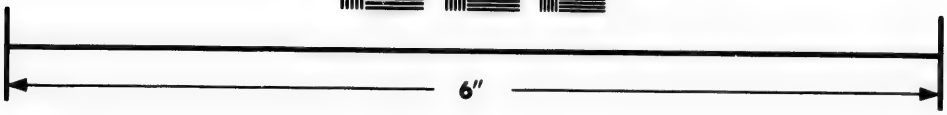
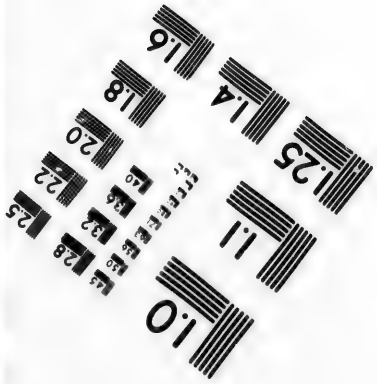
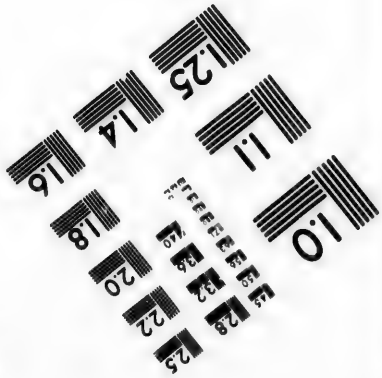


IMAGE EVALUATION TEST TARGET (MT-3)









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23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

Whereas on the day of (instant *or* last past) A. B. of the , was charged before (*me* or *us*,) the undersigned, (*or name the Magistrate or Magistrates, or as the case may be*) (*one*) of Her Majesty's Justices of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*) of for that (*etc., as in the summons*) ; And whereas (I *or* he, *the said Justice of the Peace, or* we, *or* they, *the said Justices of the Peace*) did then issue (*my, our, his* or *their*) Summons to the said A. B., commanding him, in Her Majesty's name, to be and appear before (*me*) on at o'clock in the (*fore*) noon, at , or before such other Justice or Justices of the Peace as should then be there, to answer to the said charge, and to be further dealt with according to law ; And whereas the said A. B. hath neglected to be or appear at the time and place appointed in and by the said Summons, although it hath now been proved to (*me*) upon oath, that the said Summons was duly served upon the said A. B. ; These are therefore to command you in Her Majesty's name forthwith to apprehend the said A. B., and to bring him before (*me*) or some other of Her Majesty's Justices of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*,) of , to answer the said charge, and to be further dealt with according to law.

Given under (*my*) Hand and Seal, this day of , in the year of Our Lord , at , in the District (*or* County, etc.,) of aforesaid.

J. S. [L. S.]

(D 2) *See* s. 3.

WARRANT TO APPREHEND A PERSON CHARGED WITH AN INDICTABLE OFFENCE COMMITTED ON THE HIGH SEAS OR ABROAD.

For offences committed on the high seas the warrant may be the same as in ordinary cases, but describing the offence to have been committed " on the high seas, out of the body of any District or County of Canada and within the jurisdiction of the Admiralty of England."

For offences committed abroad, for which the parties may be indicted in Canada, the warrant also may be the same as in ordinary cases, but describing the offence to have been committed " on land out of Canada, to wit : at , in the Kingdom of , *or* at , in the Island of , in the West Indies, *or* at , in the East Indies," *or as the case may be.*

(E 1) *See* s. 12.

INFORMATION TO OBTAIN A SEARCH WARRANT.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*, of

The information of A. B., of the , of , in the said District (*or* County, *etc.*,) (*yeoman*), taken this day of , in the year of Our Lord , before me, W. S., Esquire, one of Her Majesty's Justices of the Peace, in and for the District (*or* County, United Counties, *or as the case may be*,) of , who saith on the day of (*insert the description of articles stolen*) of the goods and chattels of Deponent, were feloniously stolen, taken and carried away, from and out of the (*Dwelling House, etc.*,) of this Deponent, at the (*Township, etc.*,) aforesaid, by (some person or persons unknown, *or name the person*,) and that he hath just and reasonable cause to suspect, and doth suspect that the said goods and chattels, or some part of them, are concealed in the (*Dwelling House, etc., of C. D.*) of , in the said District, (*or* County,) (*here add the causes of suspicion, whatever they may be;*) Wherefore, (*he*) prays that a Search Warrant may be granted to him to search (*the Dwelling House, etc.*,) of the said C. D. as aforesaid, for the said goods and chattels so feloniously stolen, taken and carried away as aforesaid.

Sworn (*or* affirmed) before me the day and year first above mentioned. at , in the said District (*or* County) of

W. S., *J.P.*

(E 2) *See* s. 12.

SEARCH WARRANT.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*,) of

To all or any of the Constables, or other Peace Officers, in the District (*or* County, UnitedCounties, *or as the case may be*,) of :

Whereas A. B. of the , of , in the said District. (*or* County, *etc.*,) hath this day made oath before me the undersigned, one of Her Majesty's Justices of the Peace, in and for the said District. (*or* County, United Counties, *or as the case may be*,) of , that on the day of , (*copy information as far as place of supposed concealment*); These are therefore in the name of our Sovereign

Lady the Queen, to authorize and require you, and each and every of you, with necessary and proper assistance, to enter in the day time into the said (*Dwelling House, etc.,*) of the said, *etc.*, and there diligently search for the said goods and chattels, and if the same, or any part thereof, shall be found upon such search, that you bring the goods so found, and also the body of the said C. D. before me, or some other Justice of the Peace, in and for the said District (*or* County, United Counties, *or as the case may be*) of , to be disposed of and dealt with according to law.

Given under my Hand and Seal, at , in the said District (*or* County, etc.,) this day of , in the year of Our Lord, one thousand eight hundred and

W. S., *J.P.*. (*Seal.*)

(F) *See* s. 4.

CERTIFICATE OF INDICTMENT BEING FOUND.

I hereby certify that a Court of (Oyer and Terminer, *or* General Gaol Delivery, *or* General Sessions of the Peace) holden in and for the District (*or* County, United Counties, *or as the case may be,*) of , at , in the said District, (County, etc.,) on , a Bill of Indictment was found by the Grand Jury against A. B., therein described as A. B., late of , (*laborer,*) for that he (*etc., stating shortly the offence,*) and that the said A. B. hath not appeared or pleaded to the said indictment.

Dated this , day of , one thousand eight hundred and

Z. X.

Clerk of the Crown, *or* Deputy Clerk of the Crown for the District (*or* County, United Counties, *or as the case may be,*)

or

Clerk of the Peace of and for the said District (*or* County, United Counties, *or as the case may be.*)

(G) *See* s. 4.

WARRANT TO APPREHEND A PERSON INDICTED.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*) of

To all or any of the Constables, or other Peace Officers, in the said District (*or* County, United Counties, *or as the case may be*) of :

Whereas it hath been duly certified by J. D., Clerk of the Crown of

(*name the Court*) (*or* E. G., Deputy Clerk of the Crown, *or* Clerk of the Peace, *as the case may be*) in and for the District (*or* County, United Counties, *or as the case may be*) of that (*etc., stating the certificate*); These are therefore to command you in Her Majesty's name forthwith to apprehend the said A. B., and to bring him before (*me,*) or some other Justice or Justices of the Peace in and for the said District (*or* County, United Counties *or as the case may be,*) to be dealt with according to law.

Given under my Hand and Seal, this day of , in the year of Our Lord , at in the District (*or* County, *etc.,*) aforesaid.

J. S. [L. S.]

[H] *See* s. 5.

WARRANT OF COMMITMENT OF A PERSON INDICTED.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*) of

To all or any of the Constables, or other Peace Officers in the said District (*or* County, *etc.,*) of , and the Keeper of the Common Gaol, at , in the said District (*or* County, United Counties, *or as the case may be*) of ;

Whereas by a Warrant under the Hand and Seal of (*one*) of Her Majesty's Justices of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*] of under Hand and Seal dated , after reciting that it had been certified by J. D. (*etc., as in the certificate,*) ( ) the said Justice of the Peace commanded all or any of the Constables, in Her Majesty's name, forthwith to apprehend the said A. B. and to bring him before (*him*) the said Justice of the Peace in and for the said District [*or* County, United Counties, *or as the case may be,*) of or before some other Justice or Justices in and for the said District (*or* County, United Counties, *or as the case may be,*) to be dealt with according to law; And whereas the said A. B. hath been apprehended under and by virtue of the said Warrant, and being now brought before (*me*) it is hereupon duly proved to (*me*) upon oath that the said A. B. is the same person who is named and charged by , in the said indictment; These are therefore to command you the said Constables and Peace Officers, or any of you, in Her Majesty's name, forthwith to take and convey the said A. B. to the said Common Gaol at , in the said District (*or* County, United Counties, *or as the case may be,*) of , and there to deliver him to the Keeper thereof, together with this Precept; and (*I*) hereby command you the said Keeper to receive the said A. B.

into your custody in the said Gaol, and him there to safely keep until he shall thence be delivered by due course of law.

Given under my Hand and Seal, this day of in the year of Our Lord , at , in the District (*or*, County, *etc.*,) aforesaid.

J. S. [L. S.]

[I] *See* s. 6.

WARRANT TO DETAIN A PERSON INDICTED WHO IS ALREADY IN CUSTODY FOR ANOTHER OFFENCE.

Canada,
Province of
District (*or* County,
United Counties, *or*
as the case may be)
of

To the Keeper of the Common Gaol at in the said District (*or* County, United Counties, *or as the case may be*,) of :

Whereas it hath been duly certified by J. D., Clerk of the Crown of (*name the Court*) *or* Deputy Clerk of the Crown, *or* Clerk of the Peace of and for the District *or* County, United Counties, *or as the case may be*) of that (*etc., stating the Certificate*) ; And whereas (*I am*) informed that the said A. B. is in your custody in the said Common Gaol at aforesaid, charged with some offence, or other matter; and it being now duly proved upon oath before (*me*) that the said A. B. so indicted as aforesaid, and the said A. B., in your custody as aforesaid, are one and the same person; These are therefore to command you, in Her Majesty's name, to detain the said A. B. in your custody in the Common Gaol aforesaid, until by Her Majesty's Writ of *Habeas Corpus* he shall be removed therefrom for the purpose of being tried upon the said indictment, or until he shall otherwise be removed or discharged out of your custody by due course of law.

Given under my Hand and Seal, this day of , in the year of Our Lord at , in the District (*or* County, etc.,) aforesaid

J. S. [L. S.]

(K) *See* s. 23.

ENDORSEMENT IN BACKING A WARRANT.

Canada,
Province of ,
District (*or* County,
United Counties, *or*
as the case may be)
of

Whereas proof upon oath hath this day been made before me, one of Her Majesty's Justices of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*) of that the name of J. S., to the within Warrant subscribed, is of the hand-writing of the Justice of the Peace within mentioned; I do therefore hereby authorize W. T. who bringeth to me this Warrant and all other persons to whom this warrant was originally directed, or by whom it may be lawfully executed, and also all Constables and other Peace Officers of the said District (*or* County, United Counties, *or as the case may be*) of , to execute the same within the said last mentioned District (*or* County, United Counties, *or as the case may be*).

Given under my Hand, this day of , in the year of Our Lord , at , in the District (*or* County, etc.,) aforesaid.

J. L.

(L 1) *See* s. 25.

SUMMONS TO A WITNESS.

Canada,
Province of ,
District (*or* County,
United Counties, *or*
as the case may be)
of

To E. F. of , (*labourer*):

Whereas information hath been laid before the undersigned, one of Her Majesty's Justices of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*,) of that A. B. (etc., *as in the Summons or Warrant against the accused*,) and it hath been made to appear to me upon (*oath*,) that you are likely to give material evidence for (*prosecution*); These are therefore to require you to be and to appear before me on next, at o'clock in the (*fore*) noon, at or before such other Justice or Justices of the Peace of the same District (*or* County, United Counties, *or as the case may be*,) of , as may then be there to testify what you shall know concerning the said charge so made against the said A. B. as aforesaid. Herein fail not.

Give under my Hand and Seal, this day of in the year of Our Lord , at , in the District (*or* County, etc.,) aforesaid.

J. S. [L. S.]

(L 2) *See* s. 26.

WARRANT WHEN A WITNESS HAS NOT OBEYED THE SUMMONS.

Canada,
Province of ,
District (*or* County, United Counties, *or as the case may be*,)
of

To all or any of the Constables or other Peace Officers, in the said District (*or* County, United Counties, *or as the case may be*) of

Whereas information having been laid before (*one*) of Her Majesty's Justices of the Peace, in and for the said District (*or* County, etc.,) of , that A. B., (*etc., as in the Summons ;*) And it having been made to appear to (*me*) upon oath that E. F. of , (*labourer*), was likely to give material evidence for the prosecution, (*I*) did duly issue (*my*) summons to the said E. F., requiring him to be and appear before (*me*) on , at , or before such other Justice or Justices of the Peace for the same District (*or* County, United Counties *or as the case may be*,) as might then be there, to testify what he should know respecting the said charge so made against the said A. B. as aforesaid; And whereas proof has this day been made upon oath before (*me*) of such summons having been duly served upon the said E. F.; and whereas the said E. F. hath neglected to appear at the time and place appointed by the said Summons, and no just excuse has been offered for such neglect; These are therefore to command you to bring and have the said E. F. before (*me*) on at o'clock in the (*fore*) noon, at , or before such other Justice or Justices for the same District (*or* County, United Counties, *or as the case may be*,) as may then be there, to testify what he shall know concerning the said charge so made against the said A. B. as aforesaid.

Given under my Hand and Seal, this day of in the year our Lord , at in the District (*or* County, *etc.*,) aforesaid.

J. S. [L. S.]

(L 3) *See* s. 27.

WARRANT FOR A WITNESS IN THE FIRST INSTANCE.

Canada,
Province of ,
District (*or* County, United Counties, *or as the case may be*,)
of

To all or any of the Constables, or other Peace Officers in the said District (*or* County, United Counties, *or as the case may be*) of

Whereas information has been laid before the undersigned, (*one*) of Her Majesty's Justices of the Peace, in and for the said District (*or* County,

United Counties, *or as the case may be*,) of that (*etc., as in the summons*); and it having been made to appear to (*me*) upon oath, that E. F. of , (*labourer*,) is likely to give material evidence for the prosecution, and that it is probable that the said E. F. will not attend to give evidence unless compelled to do so; these are therefore to command you to bring and have the said E. F. before (*me*) on at o'clock in the (*fore*) noon, at , or before such other justice or Justices of the Peace for the same District (*or* County, United Counties, *or as the case may be*,) as may then be there, to testify what he shall know concerning the said charge so made against the said A. B. as aforesaid.

Given under my Hand and Seal, this day of in the year of Our Lord , at in the District (*or* County, *etc.*,) aforesaid.

J. S. (L. S.)

(L 4) *See* s. 28.

WARRANT OF COMMITMENT OF A WITNESS FOR REFUSING TO BE SWORN, OR TO GIVE EVIDENCE.

Canada,
Province of ,
District (*or* County,
United Counties, *or as the case may be*,)
of

To all or any of the Constables, or other Peace Officers, in the District (*or* County, United Counties, *or as the case may be*) of , and to the Keeper of the Common Gaol at , in the said District (*or* County, United Counties, *or as the case may be*,) of :

Whereas A. B. was lately charged before (*one*) of Her Majesty's Justices of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*) of , for that (*etc., as in the Summons*); And it having been made to appear to (*me*) upon oath that E. F. of was likely to give material evidence for the prosecution, (*I*) duly issued (*my*) Summons to the said E. F. requiring him to be and appear before me on , at , or before such other Justice or Justices of the Peace for the same District (*or* County, United Counties, *or as the case may be*) as should then be there, to testify what he should know concerning the said charge so made against the said A. B. as aforesaid; And the said E. F. now appearing before (*me*) (*or* being brought (*me*) by virtue of a Warrant in that behalf, to testify as aforesaid,) and being required to make oath or affirmation as a witness in that behalf, hath now refused so to do, (*or* being duly sworn as a witness doth now refuse to answer certain questions concerning the premises which are now

here put to him, and more particularly the following) without offering any just excuse for such refusal; These are therefore to command you, the said Constables, Peace Officers, or any one of you, to take the said E. F. and him safely convey to the Common Gaol at , in the District (*or* County, etc.,) aforesaid, and there to deliver him to the Keeper thereof, together with this Precept; And (*I*) do hereby command you, the said Keeper of the said Common Gaol to receive the said E. F. into your custody in the said Common Gaol, and him there safely keep for the space of days, for his said contempt, unless he shall . the meantime consent to be examined, and to answer concerning the premises; and for your so doing, this shall be your sufficient Warrant.

Given under my Hand and Seal, this day of in the year of Our Lord , at , in the District (County, etc.,) aforesaid.

J. S. [L. S.]

(M) *See* s. 29.

DEPOSITIONS OF WITNESSES.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*,) of

The examination of C. W. of (*farmer*), and E. F. of (*labourer*), taken on (*oath*) this day of , in the year of our Lord , at , in the District (*or* County, *etc., or as the case may be*,) aforesaid, before the undersigned, (*one*) of Her Majesty's Justices of the Peace for the said District (*or* County, United Counties, *or as the case may be*,) in the presence and hearing of A. B. who is charged this day before (*me*) for that he, the said A. B. at (*etc. describe the offence as in a Warrant of Commitment.*)

This Deponent, C D., upon his (*oath*) saith as follows: (*etc., stating the deposition of the witness as nearly as possible in the words he uses. When his deposition is completed, let him sign it.*)

And this Deponent, E. F., upon his (*oath*) saith as follows: (*etc.*)

The above depositions of C. D. and E. F. were taken and (*sworn*) before me, at , on the day and year first above mentioned.

J. S.

(N) *See* s. 31.

STATEMENT OF THE ACCUSED.

Canada,
Province of ,
District (*or* County, United Counties, *or as the case may be*,)
of

A. B. stands charged before the undersigned, (*one*) of Her Majesty's Justices of the Peace, in and for the District (*or* County, United Counties, *or as the case may be*,) aforesaid, this day of , in the year of our Lord , for that the said A. B., on , at , (*etc., as in the caption of the depositions*;) And the said charge being read to the said A. B., and the witnesses for the prosecution, C. D. and E. F., being severally examined in his presence, the said A. B. is now addressed by me as follows: "Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything, unless you desire to do so; but whatever you say will be taken down in writing, and may be given in evidence against you at your trial." Whereupon the said A. B. saith as follows: (*Here state whatever the prisoner may say, and in his very words as nearly as possible. Get him to sign it if he will.*)

A. B.

Taken before me, at , the day and year first above mentioned.

J. S.

(O 1) *See* s. 36.

RECOGNIZANCE TO PROSECUTE OR GIVE EVIDENCE.

Canada,
Province of ,
District (*or* County, United Counties, *or as the case may be*,)
of

Be it remembered, That on the day of , in the year of our Lord , C. D. of , in the of , in the (*Township*) of , in the said District (*or* County, *etc.*,) of , (*farmer*,) personally came before me, one of Her Majesty's Justices of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*,) of , and acknowledge himself to owe to Our Sovereign Lady the Queen, Her Heirs and Successors, the sum of of good and lawful current money of Canada, to be made and levied of his goods and chattels, lands and tenements, to the

use of our said Sovereign Lady the Queen, Her Heirs and Successors, if the said C. D. shall fail in the condition endorsed.

Taken and acknowledged the day and year first above mentioned, at , before me.

J. S.

CONDITION TO PROSECUTE.

The condition of the within (*or* above) written recognizance is such that whereas one A. B. was this day charged before me, J. S., Justice of the Peace within mentioned, for that (*etc., as in the caption of the depositions*;) if therefore, he the said C. D. shall appear at the next Court of Oyer and Terminer *or* General Gaol Delivery, (*or* at the next Court of General *or* Quarter Sessions of the Peace,) to be holden in and for the District (*or* County, United Counties, *or as the case may be,*) of * , and there prefer or cause to be preferred a Bill of Indictment for the offence aforesaid, against the said A. B. and there also duly prosecute such indictment, then the said Recognizance to be void or else to stand in full force and virtue.

CONDITION TO PROSECUTE AND GIVE EVIDENCE.

(*Same as the last form, to the asterisk,* and then thus:*)—"And there "prefer or cause to be preferred a Bill of Indictment against the said A. "B. for the offence aforesaid, and duly prosecute such Indictment, and give "evidence thereon, as well to the Jurors who shall then enquire into the "said offence, as also to them who shall pass upon the trial of the said "A. B., then the said Recognizance to be void, or else to stand in full force "and virtue."

CONDITION TO GIVE EVIDENCE.

(*Same as the last form but one, to the asterisk,* and then thus:*)—"And "there give such evidence as he knoweth upon a Bill of Indictment to be "then and there preferred against the said A. B. for the offence aforesaid, "as well to the Jurors who shall there enquire of the said offence, as also "to the Jurors who shall pass upon the trial of the said A. B. if the said "Bill shall be found a True Bill, then the said Recognizance to be void, "otherwise to remain in full force and virtue."

(O 2) *See* s. 37.

NOTICE OF THE SAID RECOGNIZANCE TO BE GIVEN TO THE PROSECUTOR AND HIS WITNESSES.

Canada,
Province of ,
District (*or* County,
United Counties, *or as the case may be,*)
of

Take notice that you C. D. of , are bound in the sum of to appear at the next Court of Oyer and Terminer and General Gaol

Delivery, (*or* at the next Court of General Quarter Sessions of the Peace, in and for the District (*or* County, United Counties, *or as the case may be*) of to be holden at , in the said District (County, *etc.*) and then and there, (*prosecute and*) give evidence against A. B., and unless you then appear there: (*prosecute and*) give evidence accordingly, the Recognizance entered into by you will be forthwith levied on you.

Dated this day of one thousand eight hundred and

J. S.

(P 1) *See* s. 39.

COMMITMENT OF A WITNESS FOR REFUSING TO ENTER INTO THE RECOGNIZANCE.

Canada,
Province of ,
District (*or* County, United Counties, *or as the case may be,*) of

To all or any of the Constables or other Peace Officers in the said District (*or* County, etc.,) of , and to the Keeper of the Common Gaol of the said District, (*or* County, *etc., or as the case may be,*) at , in the said District (*or* County, *etc., or as the case may be,*) of :

Whereas A. B. was lately charged before the undersigned, (*or name of Justice of the Peace*) (*one*) of Her Majesty's Justices of the Peace in and for the said District (*or* County, etc.,) of , for that (*etc., as in the Summons to the Witness,*) and it having been made to appear to (*me*) upon oath that E. F., of , was likely to give material evidence for the prosecution, (*I*) duly issued (*my*) Summons to the said E. F., requiring him to be and appear before (*me*) on , at or before such other Justice or Justices of the Peace as should then be there, to testify what he should know concerning the said charge so made against the said A. B. as aforesaid; and the said E. F. now appearing before (*me*) (or being brought before (*me*) by virtue of a Warrant in that behalf to testify as aforesaid,) hath been now examined before (*me*) touching the premises, but being by (*me*) required to enter into a Recognizance conditioned to give evidence against the said A. B., hath now refused so to do: These are therefore to command you the said Constables or Peace Officers, or any one of you, to take the said E. F. and him safely convey to the Common Gaol at , in the District (*or* County, etc.,) aforesaid, and there deliver him to the said Keeper thereof, together with this Precept; and I do hereby command you, the said Keeper of the said Common Gaol, to receive the said E. F. into your

custody in the said Common Gaol, there to imprison and safely keep him until after the trial of the said A. B. for the offence aforesaid, unless in the meantime the said E. F. shall duly enter into such Recognizance as aforesaid, in the sum of , before some one Justice of the Peace for the said District, (or County, United Counties, *or as the case may be,*) conditioned in the usual form to appear at the next Court of (Oyer and Terminer, or General Gaol Delivery, *or* General *or* Quarter Sessions of the Peace,) to be holden in and for the said District (*or* County, United Counties, *or as the case may be,*) of , and there to give evidence before the Grand Jury upon any Bill of Indictment which may then and there be preferred against the said A. B. for the offence aforesaid, and also to give evidence upon the trial of the said A. B. for the said offence, if a True Bill should be found against him for the same.

Given under my Hand and Seal, this , day of , in the year of Our Lord , at in the District (*or* County, etc.,) aforesaid.

J. S. [L. S.]

(P 2) *See* s. 40.

SUBSEQUENT ORDER TO DISCHARGE THE WITNESS.

Canada,
Province of ,
District (*or* County, United Counties, *or as the case may be,*) of

To the Keeper of the Common Gaol, at , in the District (*or* County, etc.,) of aforesaid :

Whereas by (*my*) order dated the day of (*instant*) reciting that A. B. was lately before then charged before (*me*) for a certain offence therein mentioned, and that E. F. having appeared before (*me,*) and being examined as a witness for the prosecution on that behalf, refused to enter into Recognizance to give evidence against the said A. B., and I therefore thereby committed the said E. F. to your custody, and required you safely to keep him until after the trial of the said A. B. for the offence aforesaid, unless in the meantime he should enter into such Recognizance as aforesaid; and whereas for want of sufficient evidence against the said A. B., the said A. B. has not been committed or holden to bail for the said offence, but on the contrary thereof has been since discharged, and it is therefore not necessary that the said E. F. should be detained longer in

your custody: These are therefore to order and direct you the said Keeper to discharge the said E. F. out of your custody, as to the said commitment, and suffer him to go at large.

Given under my Hand and Seal, this day of in the year of Our Lord , at , in the District (*or* County, etc.,) aforesaid.

J. S. [L. S.]

(Q 1) *See* s. 41.

WARRANT REMANDING A PRISONER.

Canada,
Province of ,
District (*or* County,
United Counties, *or as the case may be*,)
of

To all or any of the Constables and other Peace Officers in the said District (*or* County, United Counties, *or as the case may be*,) of , and to the Keeper of the (Common Gaol or Lock-up House) , in the said District (*or* County, etc.,) of .

Whereas A. B. was this day charged before the undersigned (*one*) of Her Majesty's Justices of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*,) of , for that (etc., *as in the Warrant to apprehend*,) and it appears to (*me*) to be necessary to remand the said A. B.: These are therefore to command you, in Her Majesty's name, forthwith to convey the said A. B. to the (*Common Gaol* or *Lock-up House*,) at , in the said District (*or* County, etc.,) and there to deliver him to the Keeper thereof, together with this Precept; and I hereby command you the said Keeper to receive the said A. B. into your custody in the said (*Common Gaol* or *Lock-up House*,) and there safely keep him until the day of , (*instant*) when I hereby command you to have him at , at o'clock in the (*fore*) noon of the same day before (*me* or before some other Justice or Justices of the Peace for the said District (*or* County, United Counties, *or as the case may be*,) as may then be there, to answer further to the said charge, and to be further dealt with according to law, unless you shall be otherwise ordered in the meantime.

Given under my hand and seal, this day of , in the year of our Lord at in the District (*or* County, etc.,) of aforesaid.

J. S. [L. S.]

(Q 2) *See* s. 44.

RECOGNIZANCE OF BAIL INSTEAD OF REMAND ON AN ADJOURNMENT OF EXAMINATION.

Canada,
Province of
District (*or County*, United Counties, *or as the case may be*,)
of

Be it remembered, That on the , day of , in the year of our Lord, A. B. of , (*labourer*), L. M. of , (*grocer*), and N. O. of , (*butcher*), personally came before me, (*one*) of Her Majesty's Justices of the Peace for the said District (*or* County, United Counties, or *as the case may be*), and severally acknowledged themselves to owe to our Sovereign Lady the Queen, Her Heirs and Successors, the several sums following, that is to say: the said A. B. the sum of and the said L. M. and N. O. of , each, of good and lawful current money of Canada, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said Lady the Queen, Her Heirs and Successors, if he, the said A. B., fail in the condition endorsed.

Taken and acknowledged the day and year first above mentioned, at before me.

J. S.

CONDITION.

The condition of the within written recognizance is such, that whereas the within bounded A. B. was this day (or on last past) charged before me for that (etc., *as in the Warrant*:) And whereas the examination of the Witnesses for the prosecution in this behalf is adjourned until the day of (*instant*:) If therefore the said A. B. shall appear before me on the said day of (*instant*), at o'clock in the (*fore*) noon, or before such such other Justice or Justices of the Peace for the said District (*or* County or United Counties, of *or as the case may be*), as may then be there, to answer (*further*) to the said charge, and to be further dealt with according to law, the said recognizance to be void, or else to stand in full force and virtue.

(Q 3) *See* s. 44.

NOTICE OF RECOGNIZANCE TO BE GIVEN TO THE ACCUSED AND HIS SURETIES.

Canada,
Province of ,
District (*or* County, United Counties, *or as the case may be*,)
of

Take notice that you A. B. of , are bound in the sum of , and your Sureties L. M. and N. O. in the sum of , each, that you

A. B. appear before me, J. S., one of Her Majesty's Justices of the Peace for the District (*or* County, United Counties, *or as the case may be,*) of , on , the day of (*instant,*) at o'clock in the (*fore*) noon, at , or before such other Justice or Justices of the same District, (*or* County, United Counties, *or as the case may be,*) as may then be there, to answer (*further*) to the charge made against you by C. D. and to be further dealt with according to law; and unless you A. B. personally appear accordingly, the Recognizance entered into by yourself and Sureties will be forthwith levied on you and them.

Dated this day of , one thousand eight hundred and

J. S.

(Q 4) *See* s. 45.

CERTIFICATE OF NON-APPEARANCE TO BE ENDORSED ON THE RECOGNIZANCE.

I hereby certify that the said A. B. hath not appeared at the time and place, in the above condition mentioned, but therein hath made default, by reason whereof the within written Recognizance is forfeited.

J. S.

(R 1) *See* s. 47.

WARRANT TO CONVEY THE ACCUSED BEFORE A JUSTICE OF THE COUNTY IN WHICH THE OFFENCE WAS COMMITTED.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*) of

To all or any of the Constables, or other Peace Officers in the said District (*or* County, United Counties, *or as the case may be,*) of

Whereas A. B. of (*labourer*), hath this day been charged before the undersigned (*one*) of Her Majesty's Justices of the Peace in and for the said District (*or* County, United Counties, *or as the case may be,*) of for that (*etc., as in the Warrant to apprehend*); And whereas (*I*) have taken the deposition of C. D. a witness examined by (*me*) in this behalf, but inasmuch as (*I*) am informed that the principal witnesses to prove the said offence against the said A. B. reside in the District (*or* County, United

Counties, *or as the case may be*,) of where the said offence is alleged to have been committed: These are therefore to command you, in Her Majesty's name, forthwith to take and convey the said A. B. to the said District (*or* County, United Counties, *or as the case may be*,) of and there carry him before some Justice or Justices of the Peace in and for that District (*or* County, United Counties, *or as the case may be*,) and near unto the (*Township of*) where the offence is alleged to have been committed, to answer further to the said charge before him or them, and to be further dealt with according to law; and (*I*) hereby further command you to deliver to the said Justice or Justices the information in this behalf, and also the said deposition of C. D. now given into your possession for that purpose, together with this Precept.

Given under my and Hand Seal, this day of , in the year of our Lord , at , in the District (*or* County, etc.,) of aforesaid.

J. S. [L. S.]

(R 2) *See* s. 49.

RECEIPT TO BE GIVEN TO THE CONSTABLE BY THE JUSTICE FOR THE COUNTY IN WHICH THE OFFENCE WAS COMMITTED.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*, of

I, J. P., one of Her Majesty's Justices of the Peace, in and for the District (*or* County, etc.,) of , hereby certify that W. T., Constable, *or* Peace Officer, of the District (*or* County, United Counties, *or as the case may be*,) of , has on this day of , one thousand eight hundred and , by virtue of and in obedience to a Warrant of J. S., Esquire, one of Her Majesty's Justices of the Peace in and for the District (*or* County, United Counties, *or as the case may be*,) of , produced before me, one A. B. charged before the said J. S. with having (*etc., stating shortly the offence*), and delivered him into the custody of by my direction, to answer to the said charge, and further to be dealt with according to law, and has also delivered unto me the said warrant, together with the information (*if any*) in that behalf, and the deposition (*s*) of C. D. (*and of*) in the said warrant mentioned, and that he has also proved to me upon oath, the handwriting of the said J. S. subscribed to the same.

Dated the day and year first above mentioned, at , in the said District (*or* County, *etc.*,) of .

J. P.

(S 1) *See* s. 52.

RECOGNIZANCE OF BAIL.

Canada,
Province of ,
District (*or* County,
United Counties, *or as the case may be*,)
of

Be it remembered, that on the day of in the year of our Lord , A. B. of , (*labourer*), L. M. of (*grocer*), and N. O. of , (*butcher*), personally came before (*us*) the undersigned, (*two*) of Her Majesty's Justices of the Peace for the District (*or* County, United Counties, *or as the case may be*,) of and severally acknowledged themselves to owe to our Sovereign Lady the Queen, Her Heirs and Successors, the several sums following, that is to say: the said A. B. the sum of , and the said L. M. and N. O. the sum of , each, of good and lawful current money of Canada, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said Sovereign Lady the Queen, Her Heirs and Successors, if he, the said A. B., fail in the condition endorsed.

Taken and acknowledged the day and year first above mentioned, at before us.

J. S.
J. N.

CONDITION.

The condition of the within written Recognizance is such, that whereas the said A. B. was this day charged before (*us*,) the Justices within mentioned for that (*etc., as in the Warrant*); if therefore the said A. B. will appear at the next Court of Oyer and Terminer (*or* General Gaol Delivery *or* Court of General or Quarter Sessions of the Peace) to be holden in and for the District (*or* County, United Counties, *or as the case may be*,) of , and there surrender himself into the custody of the Keeper of the (*Common Gaol or Lock-up House*) there, and plead to such indictment as may be found against him by the Grand Jury, for and in respect to the charge aforesaid, and take his trial upon the same, and not depart the said Court without leave, then the said Recognizance to be void, or else to stand in full force and virtue.

(S 2) *See* s. 52.

NOTICE OF THE SAID RECOGNIZANCE TO BE GIVEN TO THE ACCUSED AND HIS BAIL.

Take notice that you A. B. of , are bound in the sum o , and your sureties (L. M. and N. O.) in the sum of each

that you A. B. appear (*etc., as in the condition of the Recognizance,*) and not depart the said Court without leave; and unless you, the said A. B., personally appear and plead, and take your trial accordingly, the Recognizance entered into by you and your Sureties shall be forthwith levied on you and them.

Dated this day of , one thousand eight hundred and .

J. S.

(S 3) *See* ss. 53, 55.

WARRANT OF DELIVERANCE ON BAIL BEING GIVEN FOR A PRISONER ALREADY COMMITTED.

Canada,
Province of ,
District (*or* County, United Counties, *or as the case may be,*) of

To the Keeper of the Common Gaol of the District (*or* County, United Counties, *or as the case may be,*) of at , in the said District (*or* County, United Counties, *or as the case may be,*)

Whereas A. B., late of (*labourer,*) hath before (*us*) (*two*) of Her Majesty's Justices of the Peace in and for the said District (*or* County, United Counties, *or as the case may be,* of , entered into his own Recognizance, and found sufficient sureties for his appearance at the next Court of Oyer and Terminer or General Gaol Delivery (*or* Court of General *or* Quarter Sessions of the Peace) to be holden in and for the District (*or* County, United Counties, *or as the case may be,*) of , to answer Our Sovereign Lady the Queen, for that (*etc., as in the commitment*) for which he was taken and committed to your said Common Gaol: These are therefore to command you, in Her said Majesty's name, that if the said A. B. do remain in your custody in the said Common Goal for the said cause, and for no other, you shall forthwith suffer him to go at large.

Given under our Hands and Seals, this day of , in the year of our Lord , at in the District (*or* County, etc.,) aforesaid.

J. S. [L. S.]
J. N. [L. S.]

(T 1) *See* s. 56.

WARRANT OF COMMITMENT.

Canada,
Province of ,
District (*or* County,
United Counties, *or as the case may be*)
of

To all or any of the Constables, or other Peace Officers, in the District *or* (County, United Counties, *or as the case may be*,) of , and to the Keeper of the Common Gaol of the District (*or* County, United Counties, *or as the case may be*,) at , in the said District (*or* County, etc.,) of

Whereas A. B. was this day charged before (*me*), J. S., (*one*) of Her Majesty's Justices of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), of , on the oath of C. D., of , (*farmer*), and others, for that, (*etc., stating shortly the offence*) : These are therefore to command you the said Constables or Peace Officers, or any of you, to take the said A. B., and him safely convey to the Common Gaol at aforesaid, and there deliver him to the Keeper thereof, together with this Precept; And I do hereby command you the said Keeper of the said Common Gaol to receive the said A. B., into your custody in the said Common Gaol, and there safely to keep him until he shall be thence delivered by due course of law.

Given under my Hand and Seal, this day of , in the year of Our Lord , at , in the District (*or* County, etc.,) of aforesaid.

J. S. [L. S.]

(T 2) *See* s. 57.

GAOLERS' RECEIPT TO THE CONSTABLE FOR THE PRISONER.

I hereby certify that I have received from W. T., Constable, of the District (*or* County, etc.,) of , the body of A. B., together with a Warrant under the Hand and Seal of J. S., Esquire, one of Her Majesty's Justices of the Peace for the said District (*or* County, United Counties, *or as the case may be*,) of , and that the said A. B. was (sober, *or as the case may be*,) at the time he was delivered into my custody.

P. K.,
Keeper of the Common Gaol of the said District (*or* County, etc.)

ADDITIONAL FORMS.

The following forms are not in the Statute relating to indictable offences but are here inserted, and may be found serviceable in some cases.

They are mostly taken from Oke's Mag. For., and are slightly altered by me in some cases. J. E. S.

DEPOSITION OF CONSTABLE OF THE SERVICE OF SUMMONS.

Canada,
Province of ,
District (*or* County,
United Counties, *or*
as the case may be)
of

The deposition of A. B., of *(place)*, in said County of *(or* District, *as the case may be)*, Constable of said *(County)* taken upon oath before me, the undersigned, one of Her Majesty's Justices of the Peace in and for the said *(County)*, at *(place)*, in said *(County)*, this day of 18 , who saith that he served C. D. with the annexed summons by delivering to him a true copy thereof, and at same time shewing him the original on the day of *(instant or last past)*, at *(place)* (*or if not served personally, say*), by delivering a copy of said summons to N. M., an adult person, residing at the house of the said C. D., then present at said house, and known to this deponent as an inmate of the said house of the said C. D.

A. B.

Sworn to at , in the (*County*) of , this day of 18 .

Before me.

J. P.

DEPOSITION THAT A PERSON IS A MATERIAL WITNESS.

Canada,
Province of ,
District (*or* County,
United Counties, *or*
as the case may be,)
of

The deposition of A. B., of , in the *(County of)*, *(farmer)*, taken on oath before me, the undersigned, one of Her Majesty's Justices of the Peace in and for the said County of , at , in the said County, this day of , 18 , who saith that C. D., of , in the (*County*) of , (*merchant*), is likely to give

material evidence on behalf of the prosecution in this behalf touching the matter of the information (*or* complaint) of against E. F., and that this deponent verily believes that the said C. D. will not appear voluntarily for the purpose of being examined as a witness.

A. B.

Sworn before me at , in the (*County*) of , this day of , 18 .

J. P.

DEPOSITION THAT THE PERSON APPREHENDED IS THE SAME WHO IS INDICTED.

Canada,
Province of
District (*or* County,
United Counties, *or as the case may be*,)
of

The deposition of A. B., of , in the (*County*) of , Constable, taken upon oath before me, the undersigned, one of Her Majesty's Justices of the Peace in and for the said (*County*) of , at , in said (*County*), this day of , A.D. 18 ; who saith, I well know C. D., of , described in the certificate of J. H., Clerk of the etc., now produced by me; that I never heard mention of any other person of the same name as the said C. D. living at or near the (*place where C. D. usually lives or is to be found*), that the said C. D. now here present is the same person who is charged in the indictment referred to in the said certificate.

A. B.

Sworn before me at , in the (*County*) of , this day of 18 .

J. P.

ORDER TO BRING UP ACCUSED BEFORE EXPIRATION OF REMAND.

Canada,
Province of
District (*or* County,
United Counties, *or as the case may be*)
of

To the Keeper of the (*Common Gaol*) at , in the (*County*) of :
To wit:

Whereas A. B. was on the day of committed (*by me*) to your custody in the said (*Common Gaol*) charged for that (*as in the War-*

rant remanding the prisoner), and by the Warrant in that behalf you were commanded to have him at on the day of , now next, at o'clock in the (*fore*) noon, before such Justice or Justices of the Peace for the said (*County*), as might then be there, to answer further to the said charge and to be further dealt with according to law; and whereas it appears to me, the undersigned, one of Her Majesty's Justices of the Peace in and for the said (*County*) of , to be expedient that the said A. B. should be further examined before the expiration of the said remand: These are therefore to order you in Her Majesty's name, to bring and have the said A. B. at , at o'clock of the (*fore*) noon of (*day*) before me or some other Justice or Justices for the said (*County*), as may be then there to answer further to the said charge and to be further dealt with according to law, unless you shall be otherwise ordered in the meantime.

Given under my Hand and Seal, this day of , in the year of our Lord , at , in the (*County*) of aforesaid.

J. S. [L. S.]

COMPLAINT OF BAIL FOR A PERSON CHARGED WITH AN INDICTABLE OFFENCE IN ORDER THAT HE MIGHT BE COMMITTED IN DISCHARGE OF THEIR RECOGNIZANCES.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*,)
of

Whereas A. B., of , was on the day of , *(last past)*, committed by (*me*) to the Common Gaol of the (*County*) of , charged for that he (*as in the Warrant or order*); and whereas the said A. B. was admitted to bail, and C. D. and E. F. were on the day of , now (*last past*) severally and respectively bound by recognizance before J. P., Esquire, (*or Judge admitting to bail*), in the sum of , each, upon condition that the said A. B. should appear at the next term of (*state Court to which bound*) to be holden in and for the (*County*) of ; and there surrender himself into the custody of the Keeper of the Common Gaol (*or as the case may be*), and plead to such indictment as might be found against him by the Grand Jury for or in respect to the charge of (*state charge shortly*), and take his trial upon the same and not depart the said Court without leave; and that these complainants, the bail aforesaid, have reason to suspect and believe, and do verily suspect and believe that the said A. B. is about to depart from the Country; and therefore they pray me, the said Justice, that I would issue

my warrant of apprehension of the said A. B. in order that he may be surrendered to prison in discharge of them the said bail.

Before me, etc.

J. P. C. D.
E. F.

NOTE.—Bail may at any time surrender their principal without Warrant for that purpose, if they can apprehend him, but it is advisable to obtain a Warrant and the assistance of a Constable or Peace Officer in making the arrest. They may make the arrest at any time and at any place, and may call in the aid of others in making the arrest.

They may also, it seems, delegate the power to another or others in writing to make the arrest for them; others aiding in arrest must do so in presence of authorized person.

WARRANT TO APPREHEND THE PERSON CHARGED.

Canada,
Province of ,
District (*or* County,
United Counties, *or as the case may be*,)
of

To wit:

To all or any of the Constables and other Peace Officers in the said (*County*) of , and to C. D. and E. F. severally and respectively:

Whereas you, the said C. D. and E. F., have this day made complaint to me, the undersigned one of Her Majesty's Justices of the Peace in and for the said (*County*) of , that you, the said C. D. and E. F. have reason to suspect and believe, and do verily suspect and believe that A. B., of , who is charged with (*here state shortly the charge as in preceding form*), is about to depart from the Country, and are desirous of having a Warrant issued for the apprehension of the said A. B. that he may be surrendered to prison in discharge of the said C. D. and E. F. as bail.

These are therefore to authorize you, the said C. D. and E. F., and also to command you the said Constables and other Peace Officers in Her Majesty's name forthwith to apprehend the said A. B. and to bring him before me, or some other Justice or Justices of the Peace in and for the said (*County*), to the intent that he may be committed to the Common Gaol in and for the said (*County*) until (*state the time of Court to which party is bound*), unless he find new and sufficient sureties to become bound for him by recognizance duly ordered.

Given under my hand and seal, this day of , in the year of our Lord , at in the (*County*) of aforesaid.

J. S. [L. S.]

COMMITMENT OF THE PERSON CHARGED ON SURRENDER OF HIS BAIL AFTER APPREHENSION UNDER A WARRANT.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*) of

To wit:

To all or any of the Constables, or other Peace Officers in the (*County*) of , and to the Keeper of the Common Gaol of the (*County*) of , (*as the case may be*):

Whereas, on the day of , complaint was made to me, the undersigned (*or* J. S.) one of Her Majesty's Justices of the Peace in and for the said (*County*) of , by C. D. and E. F., of (*etc.*), that they had reason to suspect and believe, and did verily suspect and believe that A. B., of , who is charged with (*here state shortly the offence*), is about to depart from the Country, the said C. D. and E. F. being severally and respectively bound by recognizance upon condition that the said A. B. should appear at (*here state the place and time of appearance*), and there surrender himself into the custody of the Keeper of the Common Gaol there, and plead to a certain indictment as might be found against him by the Grand Jury for or in respect to the said charge, and to take his trial upon the same and not depart the said Court without leave, and the said C. D. and E. F. did pray that I would issue my Warrant of Apprehension of the said A. B. in order that he may be surrendered to prison in discharge of them his said bail. I thereupon issued my Warrant, authorizing the said C. D. and E. F. and also commanding the said Constables of and all other Peace Officers in the said (*County*) of , in Her Majesty's name, forthwith to apprehend the said A. B. and to bring him before me at on , or some other Justice or Justices of the Peace in and for the said (*County*), to the intent that he may be committed to the Common Gaol in and for the said (*County*) until the (*here state the time of Court and place*), unless he find new and sufficient sureties to become bound for him in such recognizance as aforesaid; and whereas the said A. B. hath been apprehended under and by virtue of the said Warrant, and being now brought before me the said Justice and surrendered by the said C. D. and E. F. his said bail in discharge of their recognizances, I have required the said A. B. to find new and sufficient sureties to become bound for him in such recognizance as aforesaid, but the said A. B. hath now refused so to do; These are therefore to command you the said Constables (*or other Peace Officers*) in Her Majesty's name forthwith to take and safely to convey the said A. B. to the said Common Gaol

at , in the said (*County*), and there to deliver him to the Keeper thereof, together with this precept; and I hereby command you the said Keeper to receive the said A. B. into your custody in the said Common Gaol, and him there safely to keep until the (*here state time and place to which prisoner was originally bound over and Court*), to be holden in and for the said (*County*), unless in the meantime the said A. B. shall find new and sufficient sureties to become bound for him in such recognizance as aforesaid.

Given under my Hand and Seal, this day of , in the year of Our Lord , *etc.*

J. P. [L. S.]

PART II.

SUMMARY CONVICTIONS.

SUMMARY CONVICTIONS.

ACT 32-33 VICTORIA, CHAPTER XXXI.

An Act respecting the duties of Justices of the Peace, out of Sessions, in relation to Summary Convictions and orders.

[*Assented to 22nd June, 1869.*]

Preamble.

WHEREAS it is expedient to assimilate, amend and consolidate the statute law of the several Provinces of Quebec, Ontario, Nova Scotia and New Brunswick, respecting the duties of Justices of the Peace out of Sessions in relation to Summary Convictions and orders, and to extend the same as so amended to all Canada: Therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

When an information is laid, etc., before a Justice of the Peace, etc., such Justices may issue a summons to the party accused.

Form of summons.

1. In all cases where an information is laid before one or more of Her Majesty's Justices of the Peace for any Territorial Division of Canada, that any person, being within the jurisdiction of such Justice or Justices, has committed or is suspected to have committed any offence or act over which the Parliament of Canada has jurisdiction, and for which he is liable by law, upon a Summary Conviction for the same before a Justice or Justices of the Peace, to be imprisoned or fined, or otherwise punished, and also in all cases where a complaint is made to any such Justice or Justices in relation to any matter over which the Parliament of Canada has jurisdiction, and upon which he or they have authority by law to make any order for the payment of money or otherwise, such Justice or Justices of the Peace may issue his or their Summons (A), directed to such person, stating shortly the matter of the information or complaint, and requiring him to appear at a certain time and place, before the same Justice or Justices, or before such other Justice or Justices of the same Territorial Division as may then be there, to answer to the said information or complaint, and to be further dealt with according to law.

See remarks under Chapter I.

Service of Summons.

2. Every such Summons shall be served by a Constable or other Peace Officer, or other person to whom the same may be delivered, upon the person to whom it is directed, by delivering the same to the party personally, or by leaving it with some person for him at his last or most usual place of abode.

See remarks under Chapter II.

Proof of service.

3. The Constable, Peace Officer, or person who serves the same, shall attend at the time and place, and before the Justice or Justices in the Summons mentioned, to depose, if necessary, to the service thereof.

See remarks under Chapter II.

Proviso as to *ex parte* cases.

4. But nothing hereinbefore contained shall oblige any Justice or Justices of the Peace to issue any such Summons in any case where the application for any order of Justices is by law to be made *ex parte*.

See remarks under Chapter II.

No objection allowed on account of defect or variance.

Proviso.

5. No objection shall be allowed to any information, complaint or summons, for any alleged defect therein, in substance or in form, or for any variance between such information, complaint or summons, and the evidence adduced on the part of the informant or complainant at the hearing of such information or complaint; but if any such variance appears to the Justice or Justices present and acting at such hearing to be such, that the person summoned and appearing has been thereby deceived or misled, such Justice or Justices, may, upon such terms as he or they think fit, adjourn the hearing of the case to a future day.

See remarks under Chapter I.

If the summons having been duly served, etc., is not obeyed, the Justice may issue his warrant.

Warrant may issue in the first instance on information supported by oath, etc.

6. If the person served with a Summons does not appear before the Justice or Justices at the time and place mentioned in the Summons, and it be made to appear to the Justice or Justices, by oath or affirmation, that the Summons was duly served what the Justice or Justices deem a reasonable time before the time therein appointed for appearing to the same, then the Justice or Justices, upon oath or affirmation being made before him or them, substantiating the matter of the information or complaint to his or their satisfaction, may, if he or they think fit, issue his or their Warrant (B) to apprehend the party so summoned, and to bring him before the same Justice or Justices, or before some other Justice or Justices of the Peace in and for the same Territorial Division, to answer to the said information or complaint, and to be further dealt with according to law; or the Justice or Justices

before whom any such information is laid, for any such offence as aforesaid, punishable on conviction, upon oath or affirmation being made before him or them substantiating the matter of the information to his or their satisfaction, may, if he or they think fit, instead of issuing a Summons, issue in the first instance his or their Warrant (C) for apprehending the person against whom the information has been laid, and bringing him before the same Justice or Justices, or before some other Justice or Justices of the Peace in and for the same Territorial Division, to answer to the information and to be further dealt with according to law; Provided that where a Warrant is issued in the first instance, the Justice issuing it shall furnish a copy or copies thereof, and cause a copy to be served on each party arrested at the time of such arrest.

Warrant may issue in the first instance on information, supported by oath, etc.

Proviso. Copy of warrant to be served on defendant.

See remarks under Chapter II.

7. If where a Summons has been issued, and upon the day and at the place therein appointed for the appearance of the party summoned, the party fails to appear in obedience to the Summons, then, if it be proved upon oath or affirmation to the Justice or Justices present, that a Summons was duly served upon the party a reasonable time before the time appointed for his appearance, the Justice or Justices of the Peace may proceed *ex parte* to the hearing of the information or complaint, and adjudicate thereon, as fully and effectually to all intents and purposes as if the party had personally appeared before him or them in obedience to the Summons.

Justice may proceed *ex parte*, if summons duly served, is not obeyed, etc.

See remarks under Chapter III.

8. Every Warrant to apprehend a Defendant that he may answer to an information or complaint shall be under the hand and seal or hands and seals of the Justice or Justices issuing the same, and may be directed to any one or more or to all of the Constables (or other Peace Officers) of the Territorial Division within which it is to be executed, or to such Constable and all other Constables in the Territorial Division within which the Justice or Justices who issued the Warrant hath or have jurisdiction, or generally to all the Constables (or Peace Officers) within such Territorial Division, and it shall state shortly the matter of the information or complaint on which it is founded, and shall name or otherwise describe the person against whom it has been issued, and it shall order the Constables (or other Peace Officers) to whom it is directed, to apprehend the Defendant, and to bring him before one or more Justice or Justices of the Peace, of the same Territorial Division, as the case may require, to answer to the information or complaint, and to be further dealt with according to law.

Warrant to be under hand and seal: to whom directed and what to contain.

See remarks under Chapter II.

Duration of warrant and how to be executed.

9. It shall not be necessary to make the Warrant returnable at any particular time, but the same may remain in full force until executed; and the Warrant may be executed by apprehending the Defendant at any place in the Territorial Division within which the Justices who issued the same have jurisdiction, or, in case of fresh pursuit, at any place in the next adjoining Territorial Division, within seven miles of the border of the first mentioned Territorial Division, without having the Warrant backed as hereinafter mentioned.

See remarks under Chapter II.

What officer may execute it, and where.

10. In all cases where the Warrant is directed to all Constables or Peace Officers in the Territorial Division within which the Justice or Justices who issued the same have jurisdiction, any Constable or Peace Officer for any place within the limits of the jurisdiction, may execute the Warrant in like manner as if the Warrant was directed specially to him by name, and notwithstanding that the place in which the Warrant is executed be not within the place for which he is a Constable or Peace Officer.

See remarks under Chapter II.

Backing the warrant in another jurisdiction: its effect.

11. If any person against whom any Warrant has been issued be not found within the jurisdiction of the Justice or Justices by whom it was issued, or, if he escapes into, or is, or is suspected to be in any place within Canada, out of the jurisdiction of the Justice or Justices who issued the Warrant, any Justice of the Peace, within whose jurisdiction such person may be or be suspected to be, upon proof upon oath or affirmation of the handwriting of the Justice or Justices issuing the Warrant, may make an endorsement upon it, signed with his name, authorizing the execution of the Warrant within his jurisdiction; and such endorsement shall be a sufficient authority to the person bringing the Warrant, and to all other persons to whom it was originally directed, and to all Constables or other Peace Officers of the Territorial Division wherein the endorsement has been made, to execute the same in any place within the jurisdiction of the Justice of the Peace endorsing the same, and to carry the offender, when apprehended, before the Justice or Justices who first issued the Warrant or some other Justice having the same jurisdiction.

See remarks under Chapter II.

No objection allowed for want of form: but adjournment in certain cases;

12. No objection shall be taken or allowed to any Warrant issued as aforesaid, for any alleged defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the Informant or Complainant, but if it appears to the Justice or Justices present and acting at the

hearing, that the party apprehended under the Warrant has been deceived or misled by any such variance, such Justice or Justices may, upon such terms as he or they think fit, adjourn the hearing of the case to some future day, and in the meantime commit (D) the Defendant to the Common Gaol, or other prison, or place of security within the Territorial Division or place wherein the Justice or Justices may be acting, or to such other custody as the Justice or Justices think fit, or may discharge him upon his entering into a Recognizance (E), with or without surety or sureties, at the discretion of the Justice or Justices, conditioned for his appearance at the time and place to which the hearing is so adjourned. and on what conditions.

See remarks under Chapter II.

13. In all cases where a Defendant is discharged upon Recognizance and does not afterwards appear at the time and place in the Recognizance mentioned, the Justice who took the Recognizance, or any Justice or Justices who may then be present, having certified (F) upon the back of the Recognizance the non-appearance of the Defendant, may transmit such Recognizance to the proper Officer in the Province appointed by law to receive the same, to be proceeded upon in like manner as other Recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of the non-appearance of the said Defendant, and the Justice or Justices may issue his or their Warrant for the apprehension of the Defendant on the information or complaint. Where a defendant is discharged on recognizance and fails to appear, etc.

See remarks under Chapter II.

14. In any information or complaint or proceedings thereon, in which it is necessary to state the ownership of any property belonging to or in possession of partners, joint tenants, parceners or tenants in common, or *par indivis*, it shall be sufficient to name one of such persons, and to state the property to belong to the person so named and another, or others, as the case may be; and whenever in any information or complaint or the proceedings thereon, it is necessary to mention, for any purpose whatsoever, any partners, joint tenants, parceners or tenants in common, or *par indivis*, it shall be sufficient to describe them in the manner aforesaid; and whenever in any information or complaint, or the proceedings thereon, it is necessary to describe the ownership of any work or building made, maintained or repaired at the expense of the Corporation or Inhabitants of any Territorial Division or place, or of any materials for the making, altering or repairing the same, they may be therein described as the property of the Inhabitants of such Territorial Division or place. Description of property of partners, municipal corporations, etc., in any information or complaint or proceedings thereon.

See remarks under Chapter I.

Aiders and abettors of offences punishable on summary conviction, how liable.

15. Every person who aids, abets, counsels or procures the commission of any offence which is punishable on summary conviction, shall be liable to be proceeded against and convicted for the same, either together with the principal offender, or before or after his conviction, and shall be liable, on conviction, to the same forfeiture and punishment as the principal offender, and may be proceeded against and convicted either in the Territorial Division or place where the principal offender may be convicted, or in that in which the offence of aiding, abetting, counselling or procuring was committed.

See remarks under Chapter I.

Summons to person likely to give material evidence.

16. If it be made to appear to any Justice of the Peace, by the oath or affirmation of any credible person, that any person within the jurisdiction of such Justice is likely to give material evidence on behalf of the Prosecutor or Complainant or Defendant, and will not voluntarily appear as a witness at the time and place appointed for the hearing of the information or complaint, the Justice shall issue his Summons (G 1) to such person, requiring him to be and appear at a time and place mentioned in the Summons, before the said Justice, or any other Justice or Justices of the Peace for the Territorial Division, who may then be there, to testify what he knows concerning the information or complaint..

See remarks under Chapter II.

Warrant if such person fails to appear.

17. If any person so summoned neglects or refuses to appear at the time and place appointed by the Summons, and no just excuse be offered for such neglect or refusal, then (after proof upon oath or affirmation of the Summons having been served upon him, either personally or by leaving the same for him with some person at his last or most usual place of abode) the Justice or Justices before whom such person should have appeared may issue a Warrant (G 2) to bring and have such person, at a time and place to be therein mentioned, before the Justice who issued the Summons, or before any other Justice or Justices of the Peace for the same Territorial Division who may be then there, to testify as aforesaid, and the said Warrant may, if necessary, be backed as hereinbefore mentioned, in order to its being executed out of the Jurisdiction of the Justice who issued the same.

May be backed.

See remarks under Chapter II.

Warrant in the first instance.

18. If the Justice is satisfied, by evidence upon oath or affirmation, that it is probable that the person will not attend to give evidence without being compelled so to do, then in-

stead of issuing a Summons he may issue his Warrant (G 3) in the first instance, and the Warrant may, if necessary, be backed as aforesaid.

See remarks under section II.

Commitment for refusal to give evidence.

19. If on the appearance of the person so summoned before the last mentioned Justice or Justices, either in obedience to the Summons, or upon being brought before him or them, by virtue of the Warrant, such person refuses to be examined upon oath or affirmation concerning the premises, or refuses to take an oath or affirmation, or having taken the oath or affirmation refuses to answer such questions concerning the premises as are then put to him, without offering any just excuse for his refusal, any Justice of the Peace then present, and having jurisdiction, may, by Warrant (G 4) commit the person so refusing to the Common Gaol or other prison for the Territorial Division where the person there is, there to remain and be imprisoned for any time not exceeding ten days, unless in the meantime, he consents to be examined and to answer concerning the premises.

See remarks under Chapter II.

Certain complaints need not be in writing, etc.

20. In all cases of complaint upon which a Justice or Justices of the Peace may make an order for the payment of money or otherwise, it shall not be necessary that such complaint be in writing unless it be required to be so by some particular Act or Law upon which such complaint is framed.

See remarks under Chapter I.

Certain variances as to time and place between information and evidence not material.

21. In all cases of informations for offences or acts punishable upon summary conviction, any variance between the information and the evidence adduced in support thereof as to the time at which such offence or act is alleged to have been committed, shall not be deemed material, if it be proved that such information was in fact laid within the time limited by law for laying the same; and any variance between the information and the evidence adduced in support thereof, as to the place in which the offence or act is alleged to have been committed, shall not be deemed material, if the offence or act be proved to have been committed within the jurisdiction of the Justice or Justices by whom the information is heard and determined.

See remarks under Chapter I.

But if the Defendant has been misled, Justice may adjourn the

22. If any such variance, or any other variance between the information and evidence adduced in support thereof, appears to the Justice or Justices present, and acting at the hearing, to be such that the party charged by the information has been thereby deceived or misled, the Justice or Jus-

case; and on what conditions.

tices, upon such terms as he or they think fit, may adjourn the hearing of the case to some future day, and in the meantime commit (D) the Defendant to the Common Gaol, or other prison, or to such other custody as the Justice or Justices think fit, or may discharge him upon his entering into a Recognizance (E), with or without surety or sureties, at the discretion of the Justice or Justices, conditioned for his appearance at the time and place to which the hearing is adjourned.

See remarks under Chapter I.

Defendant bailed and not appearing at proper time.

23. In all cases where a Defendant has been discharged upon Recognizance as aforesaid, and does not afterwards appear at the time and place in the Recognizances mentioned, the Justice who took the Recognizance, or any other Justice or Justices who may then be there present, having certified (F) upon the back of the Recognizance the non-appearance of the Defendant, may transmit the Recognizance to the proper Officer in the Province appointed by law to receive the same, to be proceeded upon in like manner as other Recognizances, and the certificate shall be deemed sufficient *prima facie* evidence of the non-appearance of the Defendant.

See remarks under Chapter IV.

Complaints, etc., need not be on oath, unless specially so provided.

24. All complaints upon which a Justice or Justices of the Peace are authorized by law to make an order, and all informations for any offence or act punishable upon summary conviction, unless some particular Act or Law otherwise requires, and except in cases where it is herein otherwise provided, may respectively be made or laid without any oath or affirmation as to the truth thereof.

See remarks under Chapter I.

Except where warrant is issued on the first instance.

25. But in all cases of informations, where the Justice or Justices receiving the same, thereupon issue his or their Warrant in the first instance to apprehend the Defendant, and in every case where the Justice or Justices issue his or their Warrant in the first instance, the matter of the information shall be substantiated by the oath or affirmation of the Informant, or by some witness or witnesses on his behalf, before the Warrant shall be issued; and every complaint shall be for one matter of complaint only and not for two or more matters of complaint, and every information shall be for one offence only, and not for two or more offences, and every complaint or information may be laid or made by the Complainant or Informant in person, or by his Counsel or or Attorney, or other person authorized in that behalf.

Complaint or information to be for one matter only; may be made by Attorney.

See remarks under Chapter I.

When no time is limited for information or complaint.

. In all cases where no time is specially limited for making any complaint or laying any information in the Act or Law relating to the particular case, the complaint shall be made and the information shall be laid within three months from the time when the matter of the complaint or information arose, except in that part of the County of Saguenay which extends from Portneuf in the said County, to the eastward as far as the limits of Canada, including all the Islands adjoining thereto, where the time within which such complaint shall be made, or such information shall be laid, shall be extended to twelve months from the time when the matter of the complaint or information arose.

Exception as to part of County of Saguenay.

See remarks under Chapter I.

As to the hearing of complaints and information.

27. Every complaint and information shall be heard, tried, determined and adjudged by one Justice or two or more Justices of the Peace, as may be directed by the Act or Law upon which the complaint or information is framed, or by any other Act or Law in that behalf.

See remarks under Chapter III.

If there be no direction in the Act.

28. If there be no such direction in any Act or Law, then the complaint or information may be heard, tried, determined and adjudged by any one Justice for the Territorial Division where the matter of the complaint or information arose.

See remarks under Chapter III.

To be deemed an open Court.

29. The room or place in which the Justice or Justices sit to hear and try any complaint or information, shall be deemed an open and public Court to which the public generally may have access, so far as the same can conveniently contain them.

See remarks under Chapter III.

Defendant may make full defence, and produce witnesses.

30. The party against whom the complaint is made or information laid, shall be admitted to make his full answer and defence thereto, and to have the witnesses examined and cross-examined by Counsel or Attorney on his behalf.

See remarks under Chapter III.

Prosecutor may be heard by Counsel or Attorney.

31. Every Complainant or Informant in any such case shall be at liberty to conduct the complaint or information, and to have the witnesses examined and cross-examined by Counsel or Attorney on his behalf.

See remarks under Chapter III.

In case the defendant does not appear.

32. If on the day and at the place appointed by the Summons for hearing and determining the complaint or information, the Defendant against whom the same has been made or laid does not appear when called, the Constable or other person who served him with the Summons, shall declare upon

Proceeding *ex parte*, or warrant and adjournment.

oath in what manner he served the summons; and if it appear to the satisfaction of the Justice or Justices that he duly served the summons, then the Justice or Justices may proceed to hear and determine the case in the absence of the Defendant, or the Justice or Justices upon the non-appearance of the Defendant, may, if he or they think fit, issue his or their warrant in the manner hereinbefore directed, and shall adjourn the hearing of the complaint or information until the Defendant is apprehended.

See remarks under Chapter III.

When defendant has been apprehended, etc.

33. When the Defendant has been apprehended under the Warrant, he shall be brought before the same Justice or Justices, or some other Justice or Justices of the Peace for the same Territorial Division, who shall thereupon, either by his or their Warrant (H) commit the Defendant to the Common Gaol, or other prison, or if he or they think fit, verbally to the custody of the Constable or other person who apprehended him, or to such other safe custody as he or they deem fit, and may order the Defendant to be brought up at a certain time and place before him or them, of which order the Complainant or Informant shall have due notice, but no committal under this section shall be for more than one week.

Proviso.

See remarks under Chapter II.

If defendant appears, etc., and the complainant does not discharge, or adjournment on recognizance.

34. If upon the day and at the place so appointed, the Defendant appears voluntarily in obedience to the Summons in that behalf served upon him, or is brought before the Justice or Justices by virtue of a Warrant, then, if the Complainant or Informant, having had due notice, does not appear by himself, his Counsel or Attorney, the Justice or Justices shall dismiss the complaint or information, unless for some reason he or they think proper to adjourn the hearing of the same until some other day, upon such terms as he or they think fit, in which case the Justice or Justices may commit (D) the Defendant in the meantime to the Common Gaol, or other prison, or to such other custody as he or they think fit, or may discharge him upon his entering into a Recognizance (E) with or without surety or sureties, at the discretion of the Justice or Justices, conditioned for his appearance at the time and place to which such hearing may be adjourned.

See remarks under Chapter II.

If defendant afterwards fails to appear, etc.

35. If the Defendant does not afterwards appear at the time and place mentioned in his Recognizance, then the Justice who took the Recognizance, or any Justice or Justices then and there present, having certified (F) on the back of the Recognizance the non-appearance of the Defendant, may transmit the Recognizance to the proper officer appointed to

receive the same, to be proceeded upon in like manner as other Recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of the non-appearance of the Defendant.

See remarks under Chapter II.

36. If both parties appear, either personally or by their respective Counsel or Attorneys, before the Justice or Justices who are to hear and determine the complaint or information, then the said Justice or Justices shall proceed to hear and determine the same. If both parties appear.

See remarks under Chapter II.

37. In case the Defendant be present at the hearing, the substance of the information or complaint shall be stated to him, and he shall be asked if he has any cause to shew why he should not be convicted, or why an order should not be made against him, as the case may be. Proceedings on the hearing.

See remarks under Chapter II.

38. If he thereupon admits the truth of the information or complaint, and shews no sufficient cause why he should not be convicted, or why an order should not be made against him, as the case may be, the Justice or Justices present at the hearing, shall convict him or make an order against him accordingly. Justice may convict, etc., if defendant admits the truth.

See remarks under Chapter II.

39. If he does not admit the truth of the information or complaint, the Justice or Justices shall proceed to hear the Prosecutor or Complainant and such witnesses as he may examine, and such other evidence as he may adduce in support of his information or complaint, and shall also hear the Defendant and such witnesses as he may examine, and such other evidence as he may adduce in his defence, and also hear such witnesses as the Prosecutor or Complainant may examine in reply, if such Defendant has examined any witnesses or given any evidence other than as to his (the Defendant's) general character. If he does not admit the truth, etc., examination of witnesses, etc.

See remarks under Chapter II.

40. The Prosecutor or Complainant shall not be entitled to make any observations in reply, upon the evidence given by the Defendant, nor shall the Defendant be entitled to make any observations in reply upon the evidence given by the Prosecutor or Complainant in reply. As to observations by either party.

41. The Justice or Justices, having heard what each party has to say, and the witnesses and evidence adduced, shall consider the whole matter and, unless otherwise provided, determine the same, and convict or make an Order upon the Decision of the case.

Defendant, or dismiss the information or complaint, as the case may be.

See remarks under Chapter I.

Minute of conviction to be made.

42. If he or they convict or make an order against the Defendant, a minute or memorandum thereof shall then be made, for which no fee shall be paid, and the conviction (I 1, 2, 3) or order (K 1, 2, 3) shall afterwards be drawn up by the Justice or Justices in proper form, under his or their hand and seal or hands and seals.

See remarks under Chapter II.

Certificate if he dismiss the complaint, etc.

43. If the Justice or Justices dismiss the information or complaint, he or they may, when required so to do, make an order of dismissal of the same (L), and shall give the Defendant a certificate thereof (M), which certificate upon being afterwards produced, shall without further proof, be a bar to any subsequent information or complaint for the same matter, against the same party.

See remarks under Chapter II.

If information or complaint negatives any exemption, etc.

44. If the information or complaint in any case negatives any exemption, exception, proviso, or condition in the Statute on which the same is framed, it shall not be necessary for the Prosecutor or Complainant to prove such negative, but the Defendant may prove the affirmative thereof in his defence, if he would have advantage of the same.

See remarks under Chapter III.

Prosecutors and complainants in certain cases to be competent witnesses, and examined upon oath, etc.

45. Every Prosecutor of any information not having any pecuniary interest in the result, and every Complainant in any complaint, whatever his interest may be in the result of the same, shall be a competent witness to support such information or complaint; and every witness at any hearing shall be examined upon oath or affirmation, and the Justice or Justices before whom any witness appears for the purpose of being examined, shall have full power and authority to administer to every witness the usual oath or affirmation; provided that no Prosecutor shall be deemed incompetent as a witness on the ground only that he may be liable to costs.

Proviso.

See remarks under Chapter III.

Justice may adjourn hearing of any case and commit defendant or suffer him to go at large on recognizance.

46. Before or during the hearing of any information or complaint, any one Justice or the Justices present, may in his or their discretion, adjourn the hearing of the same to a certain time and place to be then appointed and stated in the presence and hearing of the party or parties, or of their respective Attorneys or Agents then present, and in the meantime the Justice or Justices may suffer the Defendant to go at large or may commit (D) him to the Common Gaol or other

prison, within the Territorial Division for which the Justice or Justices are then acting, or to such other safe custody as the Justice or Justices think fit, or may discharge the Defendant upon his Recognizance (E), with or without sureties, at the discretion of the Justice or Justices, conditioned for his appearance at the time and place to which such hearing or further hearing is adjourned, but no such adjournment shall be for more than one week. Proviso.

See remarks under Chapter III.

47. If at the time and place to which the hearing or further hearing has been adjourned, either or both of the parties do not appear, personally or by his or their Counsel or Attorneys respectively, before the Justice or Justices or such other Justice or Justices as may then be there, the Justice or Justices then there present, may proceed to the hearing or further hearing as if the party or parties were present. If defendant or prosecutor do not appear, the case may nevertheless be heard.

See remarks under Chapter III.

48. If the Prosecutor or Complainant do not appear, the Justice or Justices may dismiss the information with or without cos as to him or them seems fit. If the prosecutor does not appear.

See remarks under Chapter III.

49. In all cases when a Defendant is discharged upon his Recognizance, and does not afterwards appear at the time and place mentioned in the Recognizance, the Justice or Justices who took the Recognizance, or any other Justice or Justices who may then be there present, having certified (F) on the back of the Recognizance the non-appearance of the accused party, may transmit such Recognizance to the proper officer appointed to receive the same by the laws of the Province in which the Recognizance was taken, to be proceeded upon in like manner as other Recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of the non-appearance of the Defendant. If defendant fails to reappear, etc.

See remarks under Chapter III.

50. In all cases of conviction where no particular form of conviction is given by the Act or Law creating the offence or regulating the prosecution for the same, and in all cases of conviction upon Acts or Laws hitherto passed, whether any particular form of conviction has been therein given or not, the Justice or Justices who convict, may draw up his or their conviction, on parchment or on paper, in such one of the forms of conviction (I 1, 2, 3) as may be applicable to the case, or to the like effect. Form of convictions may be as in schedule where no form is given in any future Statute.

See remarks under Chapter II.

Where no special form of order is so given, form in schedule may be adopted.

51. In case an order be made, and no particular form of order is given by the Act or Law giving authority to make such order, and in all cases of orders made under the authority of any Acts or Laws hitherto passed, whether any particular form of order is therein given or not, the Justice or Justices by whom the order is made, may draw up the same in such one of the forms of orders (K 1, 2, 3) as may be applicable to the case, or to the like effect.

See remarks under Chapter II.

Defendant to be served with copy of the minute before distress or commitment.

52. In all cases when by any Act or Law, authority is given to commit a person to prison, or to levy any sum upon his goods or chattels by distress, for not obeying an order of a Justice or Justices, the Defendant shall be served with a copy of the Minute of the Order before any Warrant of commitment or of distress is issued in that behalf, and the Order or Minute shall not form any part of the Warrant of commitment or of distress.

See remarks under Chapter IV.

Justices may award costs not inconsistent with the fees established by law.

53. In all cases of Summary Conviction, or of Orders made by a Justice or Justices of the Peace, the Justice or Justices making the same, may in his or their discretion, award and order in and by the conviction or order, that the Defendant shall pay to the Prosecutor or Complainant such costs as to the said Justice or Justices seem reasonable in that behalf, and not inconsistent with the fees established by law to be taken on proceedings had by and before Justices of the Peace.

See remarks under Chapter IV.

Costs may be awarded to defendant when the case is dismissed.

54. In cases where the Justice or Justices, instead of convicting or making an order, dismiss the information or complaint, he or they, in his or their discretion, may, in and by his or their order of dismissal, award and order that the Prosecutor or Complainant shall pay to the Defendant such costs as to the said Justice or Justices seem reasonable and consistent with law.

See remarks under Chapter IV.

Costs so allowed shall be specified.

55. The sums so allowed for costs shall in all cases be specified in the conviction or order, or order of dismissal, and the same shall be recoverable in the same manner and under the same Warrants as any penalty adjudged to be paid by the conviction or order is to be recovered.

See remarks under section IV.

And may be recovered by distress.

56. In cases where there is no such penalty to be recovered, such costs shall be recoverable by distress and sale of the goods and chattels of the party, and in default of distress, by

imprisonment, with or without hard labour, for any time not exceeding one month, unless the costs be sooner paid.

See remarks under Chapter IV.

Justice may issue warrant of distress in cases where a pecuniary penalty, etc., has been adjudged.

57. Where a conviction adjudges a pecuniary penalty or compensation to be paid, or where an order requires the payment of a sum of money, and by the Act or Law authorizing such conviction or order, the penalty, compensation, or sum of money is to be levied upon the goods and chattels of the Defendant, by distress and sale thereof; and also in cases where, by the Act or Law in that behalf, no mode of raising or levying the penalty, compensation or sum of money, or of enforcing the payment of the same, is stated or provided, the Justice or any one of the Justices making such conviction or order, or any Justice of the Peace for the same Territorial Division, may issue his Warrant of Distress (N 1, 2) for the purpose of levying the same, which Warrant of Distress shall be in writing, under the hand and seal of the Justice making the same.

See remarks under Chapter IV.

In certain cases warrant may be backed for execution in another jurisdiction.

58. If, after delivery of the Warrant of distress to the Constable or Constables to whom the same has been directed to be executed, sufficient distress cannot be found within the limits of the jurisdiction of the Justice granting the Warrant, then upon proof being made upon oath or affirmation of the handwriting of the Justice granting the Warrant, before any Justice of any other Territorial Division, such Justice shall thereupon make an endorsement (N 3) on the Warrant, signed with his hand, authorizing the execution of the Warrant within the limits of his jurisdiction, by virtue of which Warrant and endorsement the penalty or sum, and costs, or so much thereof as may not have been before levied or paid, shall be levied by the person bringing the Warrant, or by the person or persons to whom the Warrant was originally directed, or by any Constable or other Peace Officer of the last mentioned Territorial Division, by distress and sale of the goods and chattels of the Defendant therein.

See remarks under Chapter IV.

When the issuing of a warrant would be ruinous to defendant, or there are no goods, Justice may commit him.

59. Whenever it appears to any Justice of the Peace to whom application is made for any Warrant of distress, that the issuing thereof would be ruinous to the Defendant and his family, or whenever it appears to the Justice, by the confession of the Defendant or otherwise, that he hath no goods and chattels whereon to levy such distress, then the Justice, if he deems it fit, instead of issuing a Warrant of distress, may (O 1, 2) commit the Defendant to the Common Gaol, or other prison in the Territorial Division, there to be imprisoned

with or without hard labour, for the time and in the manner the Defendant could by law be committed in case such warrant of distress had issued, and no goods or chattels had been found whereon to levy the penalty, or sum and costs.

See remarks under Chapter IV.

When distress is issued, defendant may be bailed or detained until it is returned.

60. In all cases where a Justice of the Peace issues any Warrant of distress, he may suffer the Defendant to go at large, or verbally, or by a written warrant in that behalf, may order the Defendant to be kept and detained in safe custody, until return has been made to the Warrant of distress, unless the Defendant gives sufficient security, by Recognizance or otherwise, to the satisfaction of the Justice, for his appearance before him at the time and place appointed for the return of the Warrant of distress, or before such other Justice or Justices for the same Territorial Division, as may then be there.

See remarks under Chapter IV.

If defendant does not afterwards appear, the recognizance to be certified and transmitted to the proper officer.

61. In all such cases where a Defendant gives security by Recognizance, and does not afterwards appear at the time and place in the said Recognizance mentioned, the Justice who hath the same, or any Justice or Justices who may then be there present, upon certifying (F) on the back of the Recognizance the non-appearance of the Defendant, may transmit the Recognizance to the proper officer appointed by law to receive the same, to be proceeded upon in like manner as other Recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of the non-appearance of the Defendant.

See remarks under Chapter IV.

In default of sufficient distress, Justice may commit defendant to prison.

62. If at the time and place appointed for the return of any Warrant of distress, the Constable, who has had execution of the same returns (N 4) that he could find no goods or chattels whereon he could levy the sum or sums therein mentioned, together with the costs of, or occasioned by the levy of the same, the Justice of the Peace before whom the same is returned may issue his Warrant of commitment (N 5) directed to the same or any other Constable, reciting the conviction or order shortly, the issuing of the Warrant of distress. and the return thereto, and requiring the Constable to convey the Defendant to the Common Gaol, or other prison of the Territorial Division for which the Justice is then acting, and there to deliver him to the Keeper thereof, and requiring the Keeper to receive the Defendant into such gaol or prison, and there to imprison him, or to imprison him and keep him to hard labour in the manner and for the time directed by the Act or Law on which

the conviction or order mentioned in the Warrant of distress is founded, unless the sum or sums adjudged to be paid, and all costs and charges of the distress, and also the costs and charges of the commitment and conveying of the Defendant to prison, if such Justice thinks fit so to order (the amount thereof being ascertained and stated in such commitment,) be sooner paid; but if no term of imprisonment be specified in the Act or Law, the period for which the Justice shall order the Defendant to be so imprisoned, shall not exceed three months.

Proviso: Term limited.

See remarks under Chapter IV.

63. Where a Justice or Justices of the Peace, upon any information or complaint adjudges or adjudge the Defendant to be imprisoned, and the Defendant is then in prison undergoing imprisonment upon conviction for any other offence, the Warrant of commitment for the subsequent offence shall be forthwith delivered to the gaoler or other Officer to whom it is directed, and the Justice or Justices who issued the same, if he or they think fit, may award and order therein that the imprisonment for the subsequent offence shall commence at the expiration of the imprisonment to which the Defendant was previously sentenced.

Imprisonment for a subsequent offence to commence at expiration of that for a previous offence.

See remarks under Chapter IV.

64. When any information or complaint is dismissed with costs, the sum awarded for costs in the Order for dismissal may be levied by distress [Q 1] on the goods and chattels of the Prosecutor or Complainant in the manner aforesaid; and in default of distress or payment, the Prosecutor or Complainant may be committed [Q 2] to the common gaol or other prison, in manner aforesaid, for any time not exceeding one month, unless such sum, and all costs and charges of the distress, and of the commitment and conveying of the Prosecutor or Complainant to prison (the amount thereof being ascertained and stated in the commitment), be sooner paid.

If information be dismissed, costs may be recovered by distress on prosecutor.

See remarks under Chapter IV.

65. Unless it be otherwise provided in any special Act under which a conviction takes place or an order is made by a Justice or Justices of the Peace, or unless some other Court of Appeal having jurisdiction in the premises is provided by an Act of the Legislature of the Province, within which such conviction takes place or such order is made, any person who thinks himself aggrieved by any such conviction or order, may appeal, in the Province of Quebec, to the Court of Queen's Bench, Crown side; in the Province of Ontario, to the Court of General or Quarter Sessions of the Peace; in the Province of Nova Scotia, to the County Court of the

Appeal given from any conviction or order of a Justice or Justices of the Peace.

district where the cause of the information or complaint arose; in the Province of New Brunswick, to the County Court of the District where the cause of the information or complaint arose; in the Province of Manitoba, to the County Court of the County where the cause of the information or complaint arose; and in the Province of British Columbia, to the County or District Court at the sittings thereof, which shall be held nearest to the place where the cause of the information or complaint arose. In case some other Court of Appeal be provided in any Province as aforesaid, the appeal shall be to such Court. Every right of appeal shall, unless it be otherwise provided in any special Act, be subject to the conditions following (40 Vic., cap. 27).

Conditions of appeal.

Time for appeal.

1. If the conviction or order be made more than twelve days before the sittings of the Court to which the appeal is given, such appeal shall be made to the then next sittings of the Court; but if the conviction or order be made within twelve days of the sittings of such Court, then to the second sittings next after such conviction or order;

Notice to or for prosecution.

2. The person aggrieved shall give to the Prosecutor or Complainant, or to the convicting Justice or one of the convicting Justices for him, a notice in writing of such appeal, within four days after such conviction or order;

Persons so appealing to remain in custody, or give security, or in certain cases to deposit money as security.

3. The person aggrieved shall either remain in custody until the holding of the Court to which the appeal is given, or shall enter into a Recognizance, with two sufficient sureties, before a Justice or Justices of the Peace, conditioned personally to appear at the said Court, and to try such appeal and to abide the judgment of the Court thereupon; and to pay such costs as shall be by the Court awarded; or if the appeal be against any conviction or order, whereby only a penalty or sum of money is adjudged to be paid, the person aggrieved may (although the order direct imprisonment in default of payment), instead of remaining in custody as aforesaid, or giving such Recognizance as aforesaid, deposit with the Justice or Justices convicting or making the order, such sum of money as such Justice or Justices deem sufficient to cover the sum so adjudged to be paid, together with the costs of the conviction or order, and the costs of the appeal; and upon such Recognizance being given, or such deposit made, the Justice or Justices before whom such Recognizance is entered into, or deposit made, shall liberate such person if in custody.

Court to hear and determine the appeal. If affirmed or dismissed proceedings— on—If

And the Court to which such appeal is made shall thereupon hear and determine the matter of appeal, and make such order therein, with or without costs to either party, including costs of the Court below, as to the Court seems meet; and, in case of the dismissal of the appeal or the affirmance of the conviction or order, shall order and adjudge the offen-

der to be punished according to the conviction, or the Defendant to pay the amount adjudged by the said order, and to pay such costs as may be awarded; and shall, if necessary, issue process for enforcing the judgment of the Court; and in any case where, after any such deposit has been made aforesaid, the conviction or order is affirmed, the Court may order the sum thereby adjudged to be paid, together with the costs of the conviction or order, and the costs of the appeal, to be paid out of the money deposited, and the residue, if any, to be repaid to the Defendant; and in any case where, after any such deposit the conviction or order is quashed, the Court shall order the money to be repaid to the Defendant; and the said Court shall have power, if necessary, from time to time, by order endorsed on the conviction or order, to adjourn the hearing of the appeal from one sittings to another, or others, of the said Court. quashed—power to adjourn proceedings. Memorandum of quashing.—Its effect.

In every case where any conviction or order is quashed on appeal as aforesaid, the Clerk of the Peace, or other proper officer, shall forthwith endorse on the conviction or order a memorandum that the same has been quashed; and whenever any copy or certificate of such conviction or order is made, a copy of such memorandum shall be added thereto, and shall, when certified under the hand of the Clerk of the Peace, or of the proper officer having the custody of the same, be sufficient evidence in all Courts and for all purposes, that the conviction or order has been quashed.

See remarks under Chapter V.

66. When an appeal has been lodged in due form and in compliance with the requirements of this Act, against any summary conviction or decision, the Court of General or Quarter Sessions of the Peace or Court appealed to, may at the request of either Appellant or Respondent, empannel a Jury to try the facts of the case, and shall administer to such Jury the following oath: Court appealed to, may empanel a jury to try the case.

"You shall well and truly try the facts in dispute in the matter of A. B., *(the informant)* against C. D., *(the defendant)*, and a true verdict give according to the evidence: So help you God." Oath of Juror

And the Court, on the finding of the Jury, shall give such judgment as the law requires; and if a Jury be not so demanded, the Court shall try and be the absolute judges as well of the fact as of the law in respect to such conviction or decision; at the hearing of any appeal under the said Act or any Act amending it, any of the parties to the appeal may Judgment

call witnesses and adduce evidence, who, or which may not have been called or adduced at the original hearing.

(See 42 Vic. chap. 44, 1879.)

See remarks under Chapter V.

Appeal not to be based on alleged defect in form or substance, unless the same was objected to before the Justice, and he refused to adjourn the case, etc.

67. No judgment shall be given in favor of the Appellant if the appeal is based on an objection to any information, complaint or Summons, or to any Warrant to apprehend a Defendant, issued upon any such information, complaint or Summons, for any alleged defect therein in substance or in form, or for any variance between such information, complaint, Summons or Warrant and the evidence adduced in support thereof at the hearing of such information or complaint,—unless it shall be proved before the Court hearing the appeal that such objection was made before the Justice or Justices of the Peace before whom the case was tried and by whom such conviction, judgment or decision was given—nor unless it is proved that notwithstanding it was shewn to such Justice or Justices of the Peace, that by such variance the person summoned and appearing or apprehended, had been deceived or misled, such Justice or Justices refused to adjourn the hearing of the case to some further day, as provided by this Act.

See remarks under Chapter V.

Decision to be given on the merits notwithstanding defect of form in conviction, which may be amended.

68. In all cases of appeal from any summary conviction or order, had or made before any Justice or Justices of the Peace, the Court to which such appeal is made shall hear and determine the charge or complaint on which such conviction or order has been had or made upon the merits, notwithstanding any defect of form or otherwise in such conviction or order; and if the person charged or complained against is found guilty, the conviction or order shall be affirmed and the Court shall amend the same if necessary, and any conviction or order so affirmed, or affirmed and amended, shall be enforced in the same manner as convictions or orders affirmed in appeal.

See remarks under Chapter V.

If appeal is abandoned, after notice given, costs to be recovered.

69. And for the more effectual prevention of frivolous appeals, the Court of General or Quarter Sessions of the Peace or other Court or Judge to whom an appeal is made, upon proof of notice of the appeal to such Court having been given to the person entitled to receive the same, though such appeal was not afterwards prosecuted or entered, may, if such appeal has not been abandoned according to law, at the same Court for which such notice was given, order to the party or parties receiving the same such costs and charges as by the said Court or Judge may be thought reasonable and

just, to be paid by the party or parties giving such notice, such costs to be recoverable in the manner provided by this Act for the recovery of costs upon an appeal against an order or conviction.

See remarks under Chapter IV.

Proceedings after appeal.

70. In case an appeal against any conviction or order be decided in favor of the Respondents, the Justice or Justices who made the conviction or order, or any other Justice of the Peace for the same Territorial Division, may issue the Warrant of distress or commitment for execution of the same, as if no appeal had been brought.

No conviction approved may be removed by *certiorari*, etc.

71. No conviction or order affirmed, or affirmed and amended in appeal shall be quashed for want of form, or be removed by *certiorari* into any of Her Majesty's Superior Courts of Record; and no Warrant or commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.

(33 Vic. c. 27, s. 2.)

See remarks under Chapter V.

Justice convicting to return the conviction.

72. Every Justice of the Peace before whom any person shall be summarily convicted of any offence by virtue of this Act, shall transmit the conviction to the Court of General or Quarter Sessions or to the Court discharging the functions of the Court of General or Quarter Sessions as aforesaid, or to any other Court or Judge to which the right to appeal is given by section sixty-five of this Act, as the case may be, in and for the District, County or place wherein the offence has been committed, before the time when an appeal from such conviction could be heard, there to be kept by the proper officer among the records of the Court; and if such conviction has been appealed against, and a deposit of money made, shall return the deposit into the said Court; and upon any indictment or information against any person for a subsequent offence, a copy of such conviction, certified by the proper officer of the Court, or proved to be a true copy, shall be sufficient evidence to prove a conviction for the former offence, and the conviction shall be presumed to have been unappealed against, until the contrary be shown.

And the deposit money if any.

Certificate of conviction.

See remarks under Chapter II.

Effect of conviction if no appeal.

73. In all cases where it appears by the conviction, that the defendant has appeared and pleaded, and the merits have been tried, and that the defendant has not appealed

against the conviction where an appeal is allowed, or if appealed against, the conviction has been affirmed, such conviction shall not afterwards be set aside or vacated in consequence of any defect of form whatever, but the construction shall be such a fair and liberal construction as will be agreeable to the justice of the case.

See remarks under Chapter II.

To whom costs to be payable.

74. If upon any Appeal the Court trying the Appeal orders either party to pay costs, the order shall direct the costs to be paid to the Clerk of the Peace or other proper officer of the Court, to be by him paid over to the party entitled to the same, and shall state within what time the costs shall be paid.

See remarks under Chapter IV.

Enforcement of payment,

75. If the same be not paid within the time so limited, and the party ordered to pay the same has not been bound by any Recognizance conditioned to pay such costs, the Clerk of the Peace or his Deputy, on application of the party entitled to the costs, or of any person on his behalf and on payment of any fee to which he may be entitled, shall grant to the party so applying, a Certificate [R] that the costs have not been paid, and upon production of the Certificate to any Justice or Justices of the Peace for the same Territorial Division, he or they may enforce the payment of the costs by Warrant of Distress [S 1] in manner aforesaid, and in default of distress, he or they may commit [S 2] the party against whom the Warrant has issued in manner hereinbefore mentioned, for any time not exceeding two months, unless the amount of the costs and all costs and charges of the distress and also the costs of the commitment and conveying of the party to prison, if the Justice or Justices think fit so to order, (the amount thereof being ascertained and stated in the commitment), be sooner paid.

By distress or imprisonment.

See remarks under Chapter IV.

Justices to make returns to the Quarter Sessions of all convictions and fines, etc.

76. Every Justice of the Peace, shall make a Return in writing under his hand of all convictions made by him to the next ensuing General or Quarter Sessions of the Peace, or to the next term or sitting of any Court having jurisdiction in appeal as hereinbefore provided, at which, in either case, the appeal can be heard, for the District or County or place in which such conviction takes place, and of the receipt and application by him of the moneys received from the Defendants (and in the case of any convictions before two or more Justices, such Justices being present and joining therein, shall make a joint Return thereof,) in the following form:

RETURN of Convictions made by me (*or* us, *as the case may be*) in the month of 18.

Name of the Prosecutor.	Name of the Defendant.	Nature of the charge.	Date of Conviction.	Name of Convicting Justice.	Amount of penalty, fine or damage.	Time when paid or to be paid to said Justice.	To whom paid over by said Justice.	If not paid, why not, and general observations, if any.

A. B., Convicting Justice,
or
A. B. and C. D., Convicting Justices, (*as the case may be.*)
See infra, 78a.

Returns of subsequent receipts, etc.

77. And any Justice or Justices to whom any such moneys may be afterwards paid, shall make a Return of the receipts and application thereof, to the next General or Quarter Sessions of the Peace, or other Court as aforesaid, which Return shall be filed by the Clerk of the Peace, with the records of his office.

See remarks under Chapter II.

Penalty on Justices of the Peace neglecting to comply with the provisions of this Act as to returns, etc.

78. In case the Justice or Justices, before whom any such conviction takes place, or who receives any such moneys, neglect or refuse to make such Return thereof, or in case any such Justice or Justices wilfully make a false, partial or incorrect return, or wilfully receive a larger amount of fees than by law they are authorized to receive, such Justice or Justices, so neglecting, or refusing, or wilfully making such false, partial or incorrect Return, or wilfully receiving a larger amount of fees as aforesaid, shall forfeit and pay the sum of eighty dollars, together with full costs of suit, to be recovered by any person suing for the same by action of debt or information in any Court of Record in the Province in which such Return ought to have been or is made, one moiety whereof shall be paid to the party suing, and the other moiety into the hands of Her Majesty's Receiver-General to and for the public uses of the Dominion.

PROVISIONS AS TO SECTIONS 76-78 BY ACT, 33 VIC. CAP. 27, S. 3.

At what time and to whom returns required by section seventy-six shall be made.

What cases any such returns shall include—

78a. And whereas, in some of the Provinces of Canada, the terms or sittings of the General Sessions of the Peace or other Courts to which, under section seventy-six of the said Act, Justices of the Peace are required to make Returns of Convictions had before them, may not be held as often as once in every three months; and it is desirable that such Returns should not be made less frequently: Therefore it is further enacted, that the Returns required by the said seventy-sixth section of the Act hereinbefore cited shall be made by every Justice of the Peace, quarterly, on or before the second Tuesday in each of the months of March, June, September and December, in each year, to the Clerk of the Peace or other proper officer for receiving the same under the said Act, notwithstanding the General or Quarter Sessions of the Peace of the County in which such conviction was had, may not be held in the months or at the times aforesaid; and every such Return shall include all convictions and other matters mentioned in the said section seventy-six, and not included in some previous Return, and shall, by the Clerk of the Peace or other proper officer receiving it, be fixed up and published, and a copy thereof shall be transmitted to the Minister of Finance, in the manner required by the eightieth and eighty-first sections of the said Act; and the provisions of the seventy-eighth section of the said Act, and the penalties thereby imposed, and all the other provisions of the said Act, shall hereafter apply to the Returns hereby required, and to any offence or neglect committed with respect to the making thereof, as if the periods hereby appointed for making the said Returns had been mentioned in the said Act instead of the periods thereby appointed for the same.

How posted up and published, etc—

Copy to Minister of Finance—

Provisions of section seventy-eight to apply—

Actions for such penalties limited to six months after cause.

79. All prosecutions for penalties arising under the provisions of the next preceding section shall be commenced within six months next after the cause of action accrues, and the same shall be tried in the District, County or place wherein such penalties have been incurred, and if a verdict or judgment passes for the Defendant, or the Plaintiff becomes non-suit, or discontinues the action after issue joined, or if upon demurrer, or otherwise, judgment be given against the Plaintiff, the Defendant shall recover his full costs of suit, as between Attorney and Client, and shall have the like remedy for the same, as any Defendant hath by law in other cases.

See remarks under Chapter I.

Clerk of the Peace, etc., to publish and post up the

80. The Clerk of the Peace of the District or County in which any such Returns are made of the proper officer other than the Clerk of the Peace to whom such Returns are made, shall, within seven days after the adjournment of the next

ensuing General or Quarter Sessions, or of the term or sitting of such other Court as aforesaid, cause the said Returns to be published in one public newspaper, in the District or County, or if there be no such newspaper, then in a newspaper of an adjoining District or County, and shall also fix up in the Court House of the District or County, and also in a conspicuous place in the Office of such Clerk of the Peace, for public inspection, a Schedule of the Returns so made by such Justices; and the same shall continue to be so fixed up, and exhibited until the end of the next ensuing General or Quarter Sessions of the Peace or of the term or sitting of such other Court as aforesaid, and for every Schedule so made and exhibited by the said Clerk of the Peace, he shall be allowed the expense of publication, and such fee as may be fixed by competent authority. returns so made.

See remarks under Chapter IV.

81. The Clerk of the Peace or other officer as last aforesaid of each District or County, within twenty days after the end of each General or Quarter Sessions of the Peace, or the sitting of such Court as aforesaid, shall transmit to the Minister of Finance, a true copy of all such Returns made within his District or County. Copy of returns to be sent to Minister of Finance

See remarks under Chapter IV.

82. Nothing in the six next preceding sections shall have the effect of preventing any person aggrieved, from prosecuting by indictment, a Justice of the Peace, for any offence, the commission of which would subject him to indictment at the time of the coming into force of this Act. Not to prevent prosecution of a Justice in default.

83. In all cases where a Warrant of Distress has issued against any person, and such person pays or tenders to the Constable having the execution of the same, the sum or sums in the Warrant mentioned, together with the amount of the expenses of the distress up to the time of payment or tender, the Constable shall cease to execute the same. In case of tender or payment of the amount of distress.

See remarks under Chapter IV.

84. In all cases in which any person is imprisoned for non-pavment of any penalty or other sum, he may pay or cause to be paid to the keeper of the prison in which he is imprisoned, the sum in the Warrant of Commitment mentioned, together with the amount of the costs, charges and expenses (if any) therein also mentioned, and the keeper shall receive the same, and shall thereupon discharge the person, if he be in his custody for no other matter. Payment may be made to the keeper of the prison.

See remarks under Chapter IV.

85. In all cases of summary proceedings before a Justice or Justices of the Peace out of Sessions, upon any information or complaint, one Justice may receive the information or In what cases one Justice may act.

complaint, and grant a Summons or Warrant thereon, and issue his Summons or Warrant to compel the attendance of any witnesses for either party, and do all other acts and matters necessary, preliminary to the hearing, even in cases where by the Statute in that behalf, the information or complaint must be heard and determined by two or more Justices.

See remarks under Chapter III.

After hearing, etc.

86. After a case has been heard and determined, one Justice may issue all Warrants of distress or commitment thereon.

See remarks under Chapter III.

Proceedings after judgment.

87. It shall not be necessary that the Justice who acts before or after the hearing, be the Justice or one of the Justices by whom the case is or was heard and determined.

In case two Justices are required.

88. In all cases where by any Act or Law it is required that an information or complaint shall be heard and determined by two or more Justices, or that a conviction or order shall be made by two or more Justices, such Justices must be present and acting together during the whole of the hearing and determination of the case.

See remarks under Chapter III.

Amount to be paid to party aggrieved limited.

89. When several persons join in the commission of the same offence and upon conviction thereof, each is adjudged to forfeit a sum equivalent to the value of the property, or to the amount of the injury done, no further sum shall be paid to the party aggrieved than the amount forfeited by one of such offenders only, and the corresponding sum, forfeited by the other offender, shall be applied in the same manner as other penalties imposed by a Justice or Justices of the Peace are directed to be applied.

See remarks under Chapter II.

Party aggrieved and certain others may be witnesses.

90. The evidence of the party aggrieved and also the evidence of any inhabitant of the District, County or place in which any offence has been committed, shall be admitted in proof of the offence, notwithstanding that any forfeiture or penalty incurred by the offence may be payable to any public fund of such District, County or place.

See remarks under Chapter II.

Certain magistrates to have the powers of two Justices.

91. Any one Judge of Sessions of the Peace, Recorder, Police Magistrate, District Magistrate, or Stipendiary Magistrate, appointed for any District, County, City, Borough, Town, or Place, and sitting at a Police Court or other place appointed in that behalf, shall have full power to do alone whatever is authorized by this Act to be done by two or more Justices of the Peace; and the several forms hereinafter con-

tained may be varied so far as it may be necessary to render them applicable to Police Courts, or to the Court or other place of sitting of such functionary as aforesaid.

See remarks under Chapters I and III.

Power to preserve order, etc.

92. Any Judge of Sessions of the Peace, Police Magistrate, District Magistrate, or Stipendiary Magistrate, sitting at any Police Court or other place appointed in that behalf, shall have such and like powers and authority to preserve order in the said Courts during the holding thereof, and by the like ways and means as now by law are, or may be exercised and used in like cases and for the like purposes by any Courts of Law in Canada, or by the Judges thereof respectively, during the sittings thereof.

Power to punish resistance to process, etc.

93. Any Judge of the Sessions of the Peace, Police Magistrate, District Magistrate, or Stipendiary Magistrate, in all cases where any resistance is offered to the execution of any Summons, Warrant of Execution or other Process issued by him, may enforce the due execution of the same by the means provided by the law for enforcing the execution of the Process of other Courts in like cases.

See remarks under Chapter III.

Interpretation of certain words.

94. The expression "Territorial Division" whenever used in this Act, shall mean—District, County, Union of Counties, Township, City, Town, Parish or other Judicial Division or place to which the context may apply; and the words "District or County" shall include any territorial or judicial division or place, in and for which there is such Judge, Justice, Justice's Court, officer or prison, as is mentioned in the context, and to which the context may apply.

See remarks under Chapter I.

The same

95. The words "Common Gaol" or "Prison," whenever they occur in this Act, shall be held to mean any place other than a Penitentiary where parties charged with offences against the law are usually kept and detained in custody.

Forms.

96. The several forms in the Schedule to this Act contained, varied to suit the case, or forms to the like effect, shall be deemed good, valid and sufficient in law.

Commencement of Act.

97. This Act shall commence and take effect on the first day of January, in the year of our Lord one thousand eight hundred and seventy.

SCHEDULE.

(A) *See* s. 1.

SUMMONS TO THE DEFENDANT UPON AN INFORMATION OR COMPLAINT.

Canada,
Province of ,
District (*or* County, United Counties, *or as the case may be*), of

To A. B. of (*labourer*):

Whereas information hath this day been laid (*or* complaint hath this day been made) before the undersigned, (one) of Her Majesty's Justices of the Peace in and for the said District (*or* County, United Counties, City, Town, etc., *as the case may be*) of , for that you (*here state shortly the matter of the information or complaint*): These are therefore to command you, in Her Majesty's name, to be and appear on , at o'clock in the forenoon, at , before me, or such Justice or Justices of the Peace for the said District (*or* County, United Counties, *or as the case may be*), as may then be there, to answer to the said information (*or* complaint), and to be further dealt with according to law.

Given under (*my*) Hand and Seal, this day of , in the year of our Lord , at , in the District (*or* County, *or as the case may be*) aforesaid.

J. S. [L. S.]

(B) *See* s. 6.

WARRANT WHEN THE SUMMONS IS DISOBEYED.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of

To all or any of the Constables or other Peace Officers in the District (*or* County, United Counties, *or as the case may be*) of

Whereas on last past, information was laid (*or* complaint was made) before , (*one*) of Her Majesty's Justices of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), of , for that A. B. (*etc., as in the Summons*): And whereas (*I*) the said Justice of the Peace then issued (*my*) Summons unto the said A. B., commanding him, in Her Majesty's name, to be and appear on , at o'clock in the (*fore*) noon, at , before (*me*) or such Justice or Justices of the Peace as might then be there, to answer unto the said information (*or* complaint), and to be further dealt with according to law; And whereas the said A. B. hath neglected to be and appear at the time and place so appointed in and by the said Summons, although it hath now been proved to me upon oath that the said Summons hath been duly served upon the said A. B.: These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A. B. and to bring him before (*me*) or some one or more of Her Majesty's Justices of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), to answer to the said information (*or* complaint); and to be further dealt with according to law.

Given under my Hand and Seal, this day of , in the year of our Lord at , in the District (*or* County, United Counties, *or as the case may be*), aforesaid.

J. S. [L. S.]

(C) *See* s. 6.

WARRANT IN THE FIRST INSTANCE.

Canada,
Province of ,
District (*or* County, United Counties, *or as the case may be*), of

To all or any of the Constables or other Peace Officers in the said District (*or* County, United Counties, *or as the case may be*), of :

Whereas information hath this day been laid before the undersigned, (*one*) of Her Majesty's Justices of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), of for that A. B. (*here state shortly the matter of information*); and oath being now made before me substantiating the matter of such information: These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A. B. and to bring him before (*me*) or some one or more of Her Majesty's Justices of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), to answer to the said information, and to be further dealt with according to law.

Given under my Hand and Seal, this day of , in the year of our Lord , at , in the District (County, *etc., as the case may be*), aforesaid.

J. S. [L. S.]

(D) *See* ss. 12, 22, 34, 46.

WARRANT OF COMMITTAL FOR SAFE CUSTODY DURING AN ADJOURNMENT OF THE HEARING.

Canada,
Province of ,
District (*or* County,
United Counties, *or*
as the case may be),
of

To all or any of the Constables or Peace Officers in the District (*or* County, United Counties, *or as the case may be*), of , and to the Keeper of the Common Gaol (*or* Lock-up House) at :

Whereas on last past, information was laid (*or* complaint made) before , (one of Her Majesty's Justices of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), of , for that (*etc., as in the Summons*); And whereas the hearing of the same is adjourned to the of (*instant*), at o'clock in the (*fore*) noon, at , and it is necessary that the said A. B. should in the meantime be kept in safe custody: These are therefore to command you, or any one of the said Constables or Peace Officers, in Her Majesty's name, forthwith to convey the said A. B. to the Common Gaol (*or* Lock-up House) at , and there deliver him into the custody of the Keeper thereof, together with this Precept; And I hereby require you, the said Keeper, to receive the said A. B. into your custody in the said Common Gaol (*or* Lock-up House) and there safely keep him until the day of (*instant*), when you are hereby required to convey and have him, the said A. B., at the time and

place to which the said hearing is so adjourned as aforesaid, before such Justices of the Peace for the said District (*or* County, United Counties, *or as the case may be*), as may then be there, to answer further to the said information (*or* complaint), and to be further dealt with according to law.

Given under my Hand and Seal, this day of , in the year of our Lord , at , in the District (*or* County, *etc., as the case may be*), aforesaid.

J. S. [L. S.]

(E) *See* ss. 12, 22, 34, 46.

RECOGNIZANCE FOR THE APPEARANCE OF THE DEFENDANT WHEN THE CASE IS ADJOURNED, OR NOT AT ONCE PROCEEDED WITH.

Canada,
Province of ,
District (*or* County,
United Counties, *or*
as the case may be),
of

Be it remembered, That on A. B. of , (*labourer*), and L. M. of , (*grocer*), and O. P. of , (*yeoman*), personally came and appeared before the undersigned, (*one*) of Her Majesty's Justices of the Peace for the District (*or* County, United Counties, *or as the case may be*) of , and severally acknowledged themselves to owe to our Sovereign Lady the Queen the several sums following, that is to say: the said A. B. the sum of , and the said L. M. and O. P. the sum of , each, of good and lawful current money of Canada, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said Lady the Queen, Her Heirs and Successors, if he the said A. B. shall fail in the condition endorsed (*or* hereunder written).

Taken and acknowledged the day and year first above mentioned at before me

J. S. [L. S.]

The condition of the within (*or* the above) written Recognizance is such that if the said A. B. shall personally appear on the day of , (*instant*), at o'clock in the (*fore*) noon, at , before me or such Justices of the Peace for the said District (*or* County, United Counties, *or as the case may be*) as may then be there, to answer further to the information (*or* complaint) of C. D. exhibited against the said A. B. and to be further dealt with according to law, then the said Recognizance to be void, or else to stand in full force and virtue.

NOTICE OF SUCH RECOGNIZANCE TO BE GIVEN TO THE DEFENDANT AND HIS SURETIES,

Take notice that you, A. B., are bound in the sum of , and you L. M. and O. P., in the sum of , each, that you, A. B., appear personally on at o'clock in the (*fore*) noon at , before me or such Justices of the Peace for the District (*or* County, United Counties, *or as the case may be*) of as shall then be there, to answer further to a certain information (*or* complaint) of C. D., the further hearing of which was adjourned to the said time and place, and unless you appear accordingly, the Recognizance entered into by you, A. B., and by L. M. and O. P. as your sureties, will forthwith be levied on you and them.

Dated this day of , one thousand eight hundred and

J. S. [L. S.]

(F) *See* ss. 13, 23, 35, 49, 61.

CERTIFICATE OF NON-APPEARANCE TO BE ENDORSED ON THE DEFENDANT'S RECOGNIZANCE,

I hereby certify that the said A. B. hath not appeared at the time and place in the said condition mentioned, but therein hath made default, by reason whereof the within written Recognizance is forfeited.

J. S. [L. S.]

(G 1) *See* s. 16.

SUMMONS TO A WITNESS.

Canada,
Province of ,
District (*or* County, United Counties, *or as the case may be*,) of

To E. F. of , in the said District (*or* County, United Counties, *or as the case may be*) of

Whereas information was laid (*or* complaint was made) before (*one*) of Her Majesty's Justices of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*) of , for that (etc., *as in the Summons*,) and it hath been made to appear to me upon (*oath*) that you are likely to give material evidence on behalf of the Prosecutor (*or* Complainant *or* Defendant) in this behalf; These are therefore to require you to be and appear on , at o'clock in the (*fore*) noon, at , before me or such Justice or Justices of the

Peace for the said District (*or* County, United Counties, *or as the case may be*) as may then be there, to testify what you shall know concerning the matter of the said information (*or* complaint).

Given under my Hand and Seal, this day of in the year of our Lord , at in the District (*or* County, *or as the case may be*) aforesaid.

J. S. [L. S.]

(G 2) *See* s. 17.

WARRANT WHERE A WITNESS HAS NOT OBEYED A SUMMONS.

Canada,
Province of
District (*or* County
United Counties, *or*
as the case may be),
of

To all or any of the Constables and other Peace Officers in the said District (*or* County, United Counties, *or as the case may be*), of :

Whereas information was laid (*or* complaint was made) before (*one*) of Her Majesty's Justices of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), of for that (*etc., as in the Summons*), and it having been made to appear to (*me*) upon oath, that E. F., of , in the said District (*or* County, United Counties, *or as the case may be*), (*labourer*), was likely to give material evidence on behalf of the (Prosecutor, *or as the case may be*), *(I)* did duly issue (*my*) Summons to the said E. F., requiring him to be and appear on , at o'clock in the *(fore)* noon of the same day, at , before me or such Justice or Justices of the Peace for the said District (*or* County, United Counties, *or as the case may be*), as might then be there, to testify what he should know concerning the said A. B., or the matter of the said information (*or* complaint): And whereas proof hath this day been made before me, upon oath, of such Summons having been duly served upon the said E. F.; And whereas the said E. F. hath neglected to appear at the time and place appointed by the said Summons, and no just excuse has been offered for such neglect; These are therefore to command you to take the said E. F., and to bring and have him on , at o'clock in the noon, at before me or such Justice or Justices of the Peace for the District (*or* County, United Counties, *or as the case may be*), as may then be there to testify what he shall know concerning the said information (*or* complaint).

Given under my Hand and Seal, this day of , in the year of our Lord , at , in the District (*or* County, *or as the case may be*), aforesaid.

J. S. [L. S.]

(G 3) *See* s. 18.

WARRANT FOR A WITNESS IN THE FIRST INSTANCE.

Canada,
Province of ,
District (*or* County, United Counties, *or as the case may be*), of

To all or any of the Constables, or other Peace Officers in the said District (*or* County, United Counties, *or as the case may be*), of :

Whereas information was laid (*or* complaint was made) before the undersigned (*one*) of Her Majesty's Justices of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), of for that (*etc., as in the Summons*), and it being made to appear before me upon oath, that E. F., of , (*labourer*), is likely to give material evidence on behalf of the (Prosecutor, *or as the case may be*), in this matter, and it is probable that the said E. F. will not attend to give evidence without being compelled so to do: These are therefore to command you to bring and have the said E. F., on , at o'clock in the (*fore*) noon, at , before me or such other Justice or Justices of the Peace, for the District (*or* County, United Counties, *or as the case may be*), as may then be there, to testify what he shall know concerning the matter of the said information (*or* complaint).

Given under my Hand and Seal, this day of , in the year of our Lord , at , in the District (*or* County, *or as the case may be*), aforesaid.

J. S. [L. S.]

(G 4) *See* s. 19.

COMMITMENT OF A WITNESS FOR REFUSING TO BE SWORN OR GIVE EVIDENCE.

Canada,
Province ,
District (*or* County, United Counties, *or as the case may be*), of

To all or any of the Constables or other Peace Officers in the said District (*or* County, United Counties, *or as the case may be*), of , and to the Keeper of the Common Gaol of the said District (or County, United Counties, *or as the case may be*), at :

Whereas information was laid (*or* complaint was made) before (*me*) (*one*) of Her Majesty's Justices of the Peace, in and for the said District (*or* County, United Counties, *or as the case may be*), of for that (*etc., as in the Summons*), and one E. F., now appearing before me such Justice

as aforesaid, on , at , and being required by me to make oath (*or* affirmation) as a witness in that behalf, hath now refused so to do, (*or* being now here duly sworn as a witness in the matter of the said information *or* complaint), doth refuse to answer a certain question concerning the premises which is now here put to him, and more particularly the following question (*here insert the exact words of the question*), without offering any just excuse for such his refusal: These are therefore to command you, or any one of the said Constables or Peace Officers to take the said E. F. and him safely to convey to the Common Gaol at aforesaid, and there deliver him to the said Keeper thereof, together with this Precept; and I do hereby command you the said Keeper of the said Common Gaol, to receive the said E. F. into your custody in the said Common Gaol and there imprison him for such his contempt for the space of days, unless he shall in the meantime consent to be examined and to answer concerning the premises, and for so doing, this shall be your sufficient Warrant.

Given under my Hand and Seal, this day of , in the year of our Lord , at , in the District (*or* County, *or as the case may be*), aforesaid.

J. S. [L. S.]

(H) *See* s. 33.

WARRANT TO REMAND A DEFENDANT WHEN APPREHENDED.

Canada,
Province of ,
District (*or* County, United Counties, *or as the case may be*), of ,

To all or any of the Constables, or other Peace Officers in the said District (*or* County, United Counties, *or as the case may be*) of , and to the Keeper of the Common Gaol (*or* Lock-up House) at

Whereas information was laid (*or* complaint was made) before (*one*) of Her Majesty's Justices of the Peace in and for the District (*or* County, United Counties, *or as the case may be*) of , for that (*etc., as in the summons or warrant*); And whereas the said A. B. hath been apprehended under and by virtue of a Warrant, upon such information (*or* complaint) and is now brought before me as such Justice as aforesaid: These are therefore to command you, or any one of the said Constables, or Peace officers, in Her Majesty's name, forthwith to convey the said A. B. to the Common Gaol (*or* Lock-up House) at , and there to deliver him to the said Keeper thereof, together with this Precept; And I do hereby command you the said Keeper to receive the said A. B. into your custody in the said Common Gaol (*or* Lock-up House,) and there safely keep him until next, the day of (*instant*), when you

are hereby commanded to convey and have him at , at o'clock, in the noon, of the same day, before me, or such Justice or Justices of the Peace of the said District (*or* County, United Counties, *or as the case may be*) as may then be there, to answer to the said information (*or* complaint), and to be further dealt with according to law.

Given under my Hand and Seal, this day of , in the year of our Lord, , at , in the district (*or* County, *as the case may be*) aforesaid.

J. S. [L. S.]

(I 1) *See ss. 42, 50,*

CONVICTION FOR A PENALTY TO BE LEVIED BY DISTRESS, AND IN DEFAULT OF SUFFICIENT DISTRESS, BY IMPRISONMENT.

Canada,
Province of ,
District (*or* County, United Counties, *or as the case may be,*) of .

Be it remembered, That on the day of , in the year of our Lord, , at , in the said District (*or* County, United Counties, *or as the case may be*), A. B. is convicted before the undersigned, (*one*) of Her Majesty's Justices of the Peace for the said District (*or* County, United Counties, *or as the case may be*), for that the said A. B., (*etc., stating the offence, and the time and place when and where committed,*) and I adjudge the said A. B, for his said offence to forfeit and pay the sum of (*stating the penalty, and also the compensation, if any,*) to be paid and applied according to law, and also to pay to the said C. D. the sum of , for his costs in this behalf: and if the said several sums be not paid forthwith *or*, on or before the of next,) * I order that the same be levied by distress and sale of the goods and chattels of the said A. B., and in default of sufficient distress, * I adjudge the said A. B. to be imprisoned in the Common Gaol of the said District (*or* County, United Counties, *or as the case may be,*) at , in the said District (*or* County) of (there to be kept at hard labour, if such be the sentence) for the space of unless the said several sums and all costs and charges of the said distress (and of the commitment and conveying of the said A. B. to the said Gaol) be sooner paid.

Given under my Hand and Seal, the day and year first above mentioned, at in the District (*or* County, United Counties, *or as the case may be*) aforesaid.

J. S. [L. S.]

** Or when the issuing of a Distress Warrant would be ruinous to the Defendant or his family, or it appears he has no goods whereon to levy a distress, then instead of the words between the asterisks * * say,* "inasmuch as it hath now been made to appear to me that the issuing of a Warrant of Distress in this behalf would be ruinous to the said A. B. or his family," (*or,* "that the said A. B. hath no goods or chattels whereon to levy the said sums by distress.") I adjudge, etc., (*as above, to the end.*)

(I 2) *See* ss. 42, 50.

CONVICTION FOR A PENALTY, AND IN DEFAULT OF PAYMENT, IMPRISONMENT.

Canada,
Province of ,
District (*or* County, United Counties, *or as the case may be*), of .

Be it remembered, That on the day of , in the year of our Lord , at , in the said District (*or* County, United Counties, *or as the case may be*,) A. B., is convicted before the undersigned, (*one*) of Her Majesty's Justices of the Peace for the said District (*or* County, United Counties, *or as the case may be*), for that he the said A. B., (*etc., stating the offence, and the time and place when and where it was committed,*) and I adjudge the said A. B. for his said offence to forfeit and pay the sum of (*stating the penalty and the compensation, if any,*) to be paid and applied according to law; and also to pay to the said C. D. the sum of for his costs in this behalf; and if the said several sums be not paid forthwith (*or,* on or before next,) I adjudge the said A. B. to be imprisoned in the Common Gaol of the said District (*or* County, United Counties, *or as the case may be,*) at in the said District (*or* County) of (*and there to be kept at hard labour*) for the space of , unless the said sums and the costs and charges of conveying the said A. B. to the said Common Gaol, shall be sooner paid.

Given under my Hand and Seal, the day and year first above mentioned, at in the District (*or* County, United Counties, *or as the case may be*), aforesaid.

J. S. [L. S.]

(I 3) *See* ss. 42, 50.

CONVICTION WHEN THE PUNISHMENT IS BY IMPRISONMENT, ETC.

Canada,
Province of ,
District (*or* County, United Counties, *or as the case may be*), of .

Be it remembered, That on the day of , in the year of our Lord , in the said District (*or* County, United Counties, *or as the case may be*,) A. B. is convicted before the undersigned, (*one*) of Her Majesty's Justices of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*,) for that he the said A. B. (*etc., stating the offence and the time and place when and where it was committed*); and I adjudge the said A. B. for his said offence to be imprisoned in the Common Gaol of the said District (*or* County, United Counties, *or as the case may be*), at , in the County of , (*and there to be kept at hard labour*) for the space of ; and I also adjudge the said A. B. to pay to the said C. D. the sum of for his costs in this behalf, and if the said sum for costs be not paid forthwith, (*or* on or before next), then * I order that the said sum be levied by distress and sale of the goods and chattels of the said A. B.; and in default of sufficient distress in that behalf, * I adjudge the said A. B. to be imprisoned in the said Common Gaol, (*and kept there at hard labour*), for the space of , to commence at and from the term of his imprisonment aforesaid, unless the said sum for costs shall be sooner paid.

Given under my Hand and Seal, the day and year first above mentioned at , in the District (*or* County, United Counties, *or as the case may be*) aforesaid.

J. S. [L. S.]

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* *Or, when the issuing of a distress warrant would be ruinous to the Defendant and his family, or it appears that he has no goods whereon to levy a distress, then, instead of the words between the asterisks* * say, "inasmuch as it hath now been made to appear to me that the issuing of a Warrant of distress in this behalf would be ruinous to the said A. B. and his family," (*or* "that the said A. B. hath no goods or chattels whereon to levy the said sum for costs by distress") I adjudge, etc.

(K 1) *See* ss. 42, 51.

ORDER FOR PAYMENT OF MONEY TO BE LEVIED BY DISTRESS, AND IN DEFAULT OF DISTRESS, IMPRISONMENT.

Canada,
Province of ,
District (*or* County, United Counties, *or as the case may be*), of .

Be it remembered, That on complaint was made before the undersigned, (*one*) of Her Majesty's Justices of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*) of for that (*stating the facts entitling the Complainant to the order, with the time and place when and where they occurred,*) and now at this day, to wit, on , at , the parties aforesaid appear before me the said Justice (*or* the said C. D. appears before me the said Justice, but, the said A. B., although duly called, doth not appear by himself, his Counsel or Attorney, and it is now satisfactorily proved to me on oath that the said A. B. has been duly served with the Summons in this behalf, which required him to be and appear here on this day before me or such Justice or Justices of the Peace for the said District (*or* County United Counties, *or as the case may be*) as should now be here, to answer the said complaint, and to be further dealt with according to law); and now having heard the matter of the said complaint, I do adjudge the said A. B. to pay to the said C. D. the sum of forthwith, (*or*, on or before next, *or as the Act or Law may require*), and also to pay to the said C. D. the sum of for his costs in this behalf; and if the said several sums be not paid forthwith (*or*, on or before next) then * I hereby order that the same be levied by distress, and sale of the goods and chattels of the said A. B.) and in default of sufficient distress in that behalf,* I adjudge the said A. B. to be imprisoned in the Common Gaol of the said District (*or* County, United Counties, *or as the case may be*) at in the said District (*or* County) of , (and there kept to hard labour) for the space of , unless the said several sums and all costs and charges of the said distress (and of the commitment and conveying of the said A. B. to the said Common Gaol shall be sooner paid.

Given under my Hand and Seal, this day of in the year of our Lord , at in the District (*or* County, *or as the case may be*) aforesaid.

J. S. [L. S.]

---

* *Or, when the issuing of a distress Warrant would be ruinous to the Defendant or his family, or it appears he has no goods whereon to levy a distress, then, instead of the words between the asterisks * * say,* "inasmuch

as it hath now been made to appear to me that the issuing of a Warrant of distress in this behalf would be ruinous to the said A. B. and his family," (*or*, "that the said A. B. hath no goods or chattels whereon to levy the said sums by distress.")

(K 2) *See* ss. 42, 51.

ORDER FOR PAYMENT OF MONEY, AND IN DEFAULT OF PAYMENT, IMPRISONMENT.

Canada,
Province of ,
District (*or* County, United Counties, *or as the case may be*), of .

Be it remembered, That on complaint was made before the undersigned, (*one*) of Her Majesty's Justices of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), of , for that (*stating the facts entitling the Complainant to the order, with the time and place when and where they occurred*), and now on this day, to wit, on , at , the parties aforesaid appear before me the said Justice, (*or* the said C. D. appears before me the said Justice, but the said A. B. although duly called, doth not appear by himself, his Counsel or Attorney, and it is now satisfactorily proved to me upon oath that the said A. B. has been duly served with the Summons in this behalf, which required him to be and appear here this day before me, or such Justice or Justices of the Peace for the said District (*or* County, United Counties, *or as the case may be*), as should now be here, to answer to the said complaint, and to be further dealt with according to law), and now having heard the matter of the said complaint, I do adjudge the said A. B. (to pay to the said C. D. the sum of forthwith, (*or*, on or before next, *or as the Act or Law may require*), and also to pay to the said C. D. the sum of for his costs in this behalf; and if the said several sums be not paid forthwith, (*or*, on or before next), then I adjudge the said A. B. to be imprisoned in the Common Gaol of the said District (*or* County, United Counties, *or as the case may be*), at , in the said District (*or* County) of , (there to be kept at hard labour *if the Act or Law authorize this*) for the space of , unless the said several sums (and costs and charges of commitment and conveying the said A. B. to the said Common Gaol) shall be sooner paid.

Given under my Hand and Seal, this day of , in the year of our Lord , at , in the District (*or* County, United Counties, *or as the case may be*) aforesaid.

J. S. [L. S.]

(K 3) *See* ss. 42, 51.

ORDER FOR ANY OTHER MATTER WHERE THE DISOBEYING OF IT IS PUNISHABLE WITH IMPRISONMENT.

Canada,
Province of ,
District (*or* County, United Counties, *or as the case may be*), of ,

Be it remembered, That on complaint was made before the undersigned, (*one*) of Her Majesty's Justices of the Peace in and for the said District (*or* County, United Counties, (*or as the case may be*), of , for that (*stating the facts entitling the Complainant to the order, with the time and place where and when they occurred*), and now on this day, to wit, on , at , the parties aforesaid appear before me the said Justice (*or* the said C. D. appears before me the said Justice, but the said A. B., although duly called, doth not appear by himself, his Counsel or Attorney, and it is now satisfactorily proved to me upon oath that the said A. B. has been duly served with the Summons in this behalf, which required him to be and appear here this day before me, or such Justice or Justices of the Peace for the said District (*or* County, United Counties, *or as the case may be*), as should now be here, to answer to the said complaint, and to be further dealt with according to law,) and now having heard the matter of the said complaint, I do therefore adjudge the said A. B. to (*here state the matter required to be done*), and if upon a copy of the Minute of this Order being served upon the said A. B., either personally or by leaving the same for him at his last or most usual place of abode, he shall neglect or refuse to obey the same, in that case I adjudge the said A. B. for such his disobedience to be imprisoned in the Common Gaol of the said District (*or* County, United Counties, *or as the case may be*), at , in the said County of , (there to be kept at hard labour, *if the Statute authorize this*). for the space of unless the said order be sooner obeyed, and I do also adjudge the said A. B. to pay to the said C. D. the sum of for his costs in this behalf, and if the said sum for costs be not paid forthwith, (*or* on or before next,) I order the same to be levied by distress and sale of goods and chattels of the said A. B., and in default of sufficient distress in that behalf, I adjudge the said A. B. to be imprisoned in the said Common Gaol (there to be kept at hard labour) for the space of to commence at and from the termination of his imprisonment aforesaid, unless the said sum for costs shall be sooner paid.

Given under my Hand and Seal, this day of , in the year of our Lord , at , in the District (*or* County, United Counties, *or as the case may be*), aforesaid.

J. S. [L. S.]

(L) *See* s. 43.

ORDER OF DISMISSAL OF AN INFORMATION OR COMPLAINT.

Canada,
Province of ,
District (*or* County, United Counties, *or as the case may be*) of .

Be it remembered, That on information was laid (*or* complaint was made) before the undersigned, (*one*) of Her Majesty's Justices of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), of , for that (*etc., as in the Summons to the Defendant*), and now at this day, to wit, on , at , both the said parties appear before me in order that I should hear and determine the said information (*or* complaint) (*or* the said A. B. appeareth before me, but the said C. D. although duly called doth not appear,*) whereupon the matter of the said information (*or* complaint) being by me duly considered (it manifestly appears to me that the said information (*or* complaint) is not proved), I do therefore dismiss the same, and do adjudge that the said C. D. do pay to the said A. B. the sum of for his costs incurred by him in his defence in this behalf; and if the said sum for costs be not paid forthwith, (*or*, on or before), I order that the same be levied by distress and sale of the goods and chattels of the said C. D., and in default of sufficient distress in that behalf, I adjudge the said C. D. to be imprisoned in the Common Gaol of the said District (*or* County, United Counties, *or as the case may be*) at , in the said County of , (and there to be kept at hard labour) for the space of , unless the said sum for costs and all costs and charges of the said distress (and of the commitment of the said C. D. to the said Common Gaol), shall be sooner paid.

Given under my Hand and Seal, this day of , in the year of our Lord , at , in the District (*or* County, United Counties, *or as the case may be*) aforesaid.

* *If the Informant* (*or Complainant*) *do not appear, these words may be omitted.*

(M) *See* s. 43.

CERTIFICATE OF DISMISSAL.

I hereby certify that an information (*or* complaint) preferred by C. D. against A. B. for that (*or as in the Summons,*) was this day considered by me, one of Her Majesty's Justices of the Peace in and for the District (*or* County, United Counties, *or as the case may be*) of , and was by (*me*) dismissed (*with costs*).

Dated this day of , one thousand eight hundred and

J. S. [L. S.]

(N 1) *See* s. 57.

WARRANT OF DISTRESS UPON A CONVICTION FOR A PENALTY.

Canada,
Province of ,
District (*or* County, United Counties, *or the case may be*), ,

To all or any of the Constables, or other Peace Officers in the said District (*or* County, United Counties, *or as the case may be*) of

Whereas A. B., late of , (*labourer*), was on this day (*or* on last past) duly convicted before (*one*) of Her Majesty's Justices of the Peace, in and for the said District (*or* County, United Counties, *or as the case may be*), of , for that (*stating the offence as in the conviction*), and it was thereby adjudged that the said A. B. should for such his offence forfeit and pay, (*etc., as in the conviction*), and should also pay to the said C. D. the sum of for his costs in that behalf; and it was thereby ordered that if the said several sums should not be paid (*forthwith*) the same should be levied by distress and sale of the goods and chattels of the said A. B.; and it was thereby also adjudged that the said A. B., in default of sufficient distress, should be imprisoned in the Common Gaol of the said District (*or* County, United Counties, *or as the case may be*,) at , in the said County of , (*and there to be kept at hard labour*) for the space of , unless the said several sums and all costs and charges of the said distress, and of the commitment and conveying of the said A. B. to the said Common Gaol should be sooner paid; *And whereas the said A. B., being so convicted as aforesaid, and being (*now*) required to pay the said sums of and , hath not paid the same or any part thereof, but therein hath made default: These are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said A. B.; and if within days next after the making of such distress, the said sums, together with the reasonable charges of taking and keeping the distress, shall not be paid, then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale unto me (*the convicting Justice* or *one of the convicting Justices*) that I may pay and apply the same as by law is directed, and may render the overplus, if any, on demand, to the said A. B.; and if no such distress can be found, then, that you certify the same unto me, to the end that such further proceedings may be had thereon as to law doth appertain.

Given under my Hand and Seal, this day of , in the year of our Lord , at , in the District (*or* County, *or as the case may be*), aforesaid.

J. S. [L. S.]

(N 2) *See* s. 57.

WARRANT OF DISTRESS UPON AN ORDER FOR THE PAYMENT OF MONEY.

Canada,
Province of ,
District (*or* County,
United Counties, *or as the case may be*),
of

To all or any of the Constables, or other Peace Officers, in the said District (*or* County, United Counties, *or as the case may be*), of :

Whereas on last past, a complaint was made before (*one*) of Her Majesty's Justices of the Peace, in and for the said District (*or* County, United Counties, *or as the case may be*), for that (*etc., as in the order*), and afterwards, to wit, on , at , the said parties appeared before (*as in the order*), and thereupon the matter of the said complaint having been considered, the said A. B. was adjudged (to pay to the said C. D. the sum of on or before then next), and also to pay to the said C. D. the sum of for his costs in that behalf; and it was ordered that if the said several sums should not be paid on or before the said then next, the same should be levied by distress and sale of the goods and chattels of the said A. B.; and it was adjudged that in default of sufficient distress in that behalf, the said A. B. should be imprisoned in the Common Gaol of the said District (*or* County, *or* United Counties, *or as the case may be*), at , in the said County of (and there kept at hard labour) for the space of , unless the said several sums and all costs and charges of the distress (and of the commitment and conveying of the said A. B. to the said Common Gaol) should be sooner paid; *And whereas the time in and by the said order appointed for the payment of the said several sums of and hath elapsed, but the said A. B. hath not paid the same, or any part thereof, but herein hath made default; These are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said A. B.; and if within the space of days after the making of such distress, the said last mentioned sums, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale unto me, (*or some other of the convicting Justices, as the case may be*), that I (*or* he) may pay and apply the same as by law directed, and render the overplus, if any, on demand to the said A. B.; and if no such distress can be found, then, that you certify the same unto me, to the end that such proceedings may be had therein, as to law doth appertain.

Given under my Hand and Seal, this day of , in the year of our Lord , at , in the District (*or* County, *or as the case may be*), aforesaid.

J. S. [L. S.]

(N 3) *See* s. 58.

ENDORSEMENT IN BACKING A WARRANT OF DISTRESS.

Canada,
Province of ,
District (*or* County, United Counties, *or as the case may be*), of ,

Whereas proof upon oath hath this day been made before me, one of Her Majesty's Justices of the Peace in and for the said District, (*or* County, United Counties, *or as the case may be*) that the name of J. S. to the within Warrant subscribed, is of the handwriting of the Justice of the Peace within mentioned, I do therefore authorize U. T. who bringeth me this Warrant, and all other persons to whom this Warrant was originally directed, or by whom the same may be lawfully executed, and also all Constables and other Peace Officers in the said District (*or* County, United Counties, *or as the case may be*), of , to execute the same within the said District (*or* County, United Counties, *or as the case may be*).

Given under my Hand, this day of , one thousand eight hundred and

O. K.

(N 4) *See* s. 62.

CONSTABLE'S RETURN TO A WARRANT OF DISTRESS.

I, W. T., Constable of , in the District (*or* County, United Counties, *or as the case may be*) of , hereby certify to J. S., Esquire, one of Her Majesty's Justices of the Peace for the District (*or* County, United Counties, *or as the case may be*) that by virtue of this Warrant, I have made diligent search for the goods and chattels of the within mentioned A. B., and that I can find no sufficient goods or chattels of the said A. B. whereon to levy the sums within mentioned.

Witness my Hand, this day of , one thousand eight hundred and

J. S. [L. S.]

(N 5) *See* s. 62.

WARRANT OF COMMITMENT FOR WANT OF DISTRESS.

Canada,
Province of ,
District (*or* County, United Counties, *or as the case may be*), of ,

To all or any of the Constables and other Peace Officers in the District, (*or* County, United Counties, *or as the case may be*), of , and to the Keeper of the Common Gaol of the said District (*or* County, United Counties, *or as the case may be*), of , at , in the said District (*or* County) of :

Whereas (*etc., as in either of the foregoing distress Warrants*, N. 1, 2, *to the asterisks*, * *and then thus*): And whereas afterwards on the day of , in the year aforesaid, I, the said Justice, issued a Warrant to all or any of the Constables or other Peace Officers of the District (*or* County, United Counties, *or as the case may be*), of , commanding them, or any of them, to levy the said sums of , and by distress and sale of the goods and chattels of the said A. B.; And whereas it appears to me, as well by the return to the said Warrant of distress, by the Constable who had the execution of the same, as otherwise, that the said Constable hath made diligent search for the goods and chattels of the said A. B., but that no sufficient distress whereon to levy the sums above mentioned could be found: These are therefore to command you, the said Constables or Peace Officers, or any one of you, to take the said A. B., and him safely to convey to the Common Gaol at aforesaid, and there deliver him to the said Keeper, together with this Precept; and I do hereby command you, the said Keeper of the said Common Gaol, to receive the said A. B. into your custody, in the said Common Gaol, there to imprison him (and keep him at hard labour) for the space of , unless the said several sums, and all the costs and charges of the said distress, (and of the commitment and conveying of the said A. B. to the said Common Gaol) amounting to the further sum of , shall be sooner paid unto you, the said Keeper; and for so doing, this shall be your sufficient Warrant.

Given under my Hand and Seal, this day of , in the year of our Lord , at , in the District (*or* County, *or as the case may be*) aforesaid.

J. S. [L. S.]

(O 1) *See* s. 59.

WARRANT OF COMMITMENT UPON A CONVICTION FOR A PENALTY IN THE FIRST INSTANCE.

Canada,
Province of ,
District (*or* County, United Counties, *or as the case may be*), of ,

To all or any of the Constables and other Peace Officers in the said District (*or* County, United Counties, *or as the case may be*), of , and to the Keeper of the Common Gaol of the said District (*or* County, United Counties, *or as the case may be*) of , at , in the said District (*or* County of

Whereas A. B., late of , (*labourer*), was on this day convicted before the undersigned, (*one*) of Her Majesty's Justices of the Peace, in and for the said District (*or* County, United Counties, *or as the case may be*), for

that (*stating the offence as in the conviction*), and it was thereby adjudged that the said A. B. for his offence should forfeit and pay the sum of (*etc., as in the conviction*), and should pay to the said C. D. the sum of for his costs in that behalf; and it was thereby further adjudged that if the said several sums should not be paid (*forthwith*) the said A. B. should be imprisoned in the Common Gaol of the said District (*or* County, United Counties, *or as the case may be*), at , in the said District (*or* County) of , (and there kept at hard labour) for the space of , unless the said several sums and the costs and charges of conveying the said A. B. to the said Common Gaol should be sooner paid; And whereas the time in and by the said conviction appointed for the payment of the said several sums hath elapsed, but the said A. B. hath not paid the same or any part thereof, but therein hath made default; These are therefore to command you, the said Constables or Peace Officers, or any one of you, to take the said A. B., and him safely to convey to the Common Gaol at aforesaid, and there to deliver him to the said Keeper thereof, together with this Precept; and I do hereby command you, the said Keeper of the said Common Gaol, to receive the said A. B. into your custody in the said Common Gaol, there to imprison him (and keep him at hard labour) for the space of , unless the said several sums (and costs and charges of carrying him to the said Common Gaol, amounting to the further sum of), shall be sooner paid unto you, the said Keeper; and for your so doing, this shall be your sufficient Warrant.

Given under my Hand and Seal, this day of , in the year of our Lord , at , in the District (*or* County, *or as the case may be*), aforesaid.

J. S. [L. S.]

(O 2) *See* s. 59.

WARRANT OF COMMITMENT ON AN ORDER IN THE FIRST INSTANCE.

Canada,
Province of ,
District (*or* County, United Counties, *or as the case may be*), of

To all or any of the Constables and other Peace Officers in the said District (*or* County, United Counties, *or as the case may be*), of , and to the Keeper of the Common Gaol of the District (*or* County, United Counties, *or as the case may be*), of , at , in the said District (*or* County) of :

Whereas on last past, complaint was made before the undersigned, (*one*) of Her Majesty's Justices of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), of

or that *(etc., as in the order)*, and afterwards, to wit, on the day of , at , the parties appeared before me, the said Justice (*or as it may be in the order*), and thereupon having considered the matter of the complaint, I adjudged the said A. B. to pay the said C. D. the sum of on or before the day of then next, and also to pay to the said C. D. the sum of for his costs in that behalf; and I also thereby adjudged that if the said several sums should not be paid on or before the day of then next, the said A. B. should be imprisoned in the Common Gaol of the District (*or* County, United Counties, *or as the case may be*), of , at , in the said County of , (and there be kept at hard labour) for the space of , unless the said several sums (and the costs and charges of conveying the said A. B. to the said Common Gaol, *as the case may be*), should be sooner paid; And whereas the time in and by the said order appointed for the payment of the said several sums of money hath elapsed, but the said A. B. hath not paid the same or any part thereof, but therein hath made default; These are therefore to command you, the said Constables and Peace Officers, or any of you, to take the said A. B. and him safely to convey to the said Common Gaol, at aforesaid, and there to deliver him to the Keeper thereof, together with this Precept; and I do hereby command you, the said Keeper of the said Common Gaol, to receive the said A. B. into your Custody in the said Common Gaol, there to imprison him (*and keep him at hard labour*) for the space of , unless the said several sums (and the costs and charges of conveying him to the said Common Gaol, amounting to the further sum of), shall be sooner paid unto you, the said Keeper; and for your so doing, this shall be your sufficient Warrant.

Given under my Hand and Seal, this day of , in the year of our Lord , at , in the District (*or* County, *or as the case may be*), aforesaid.

J. S. [L. S.]

(Q 1) *See* s. 64.

WARRANT OF DISTRESS FOR COSTS UPON AN ORDER FOR DISMISSAL OF AN INFORMATION OR COMPLAINT.

Canada,
Province ,
District (*or* County, United Counties, *or as the case may be*), of

To all or any of the Constables or other Peace Officers, in the said District (*or* County, United Counties, *or as the case may be*), of

Whereas on last past, information was laid (*or* complaint was made) before (*one*) of Her Majesty's Justices of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*) of for that (*etc., as in the order of dismissal*), and afterwards, to

wit, on , at , both parties appearing before in order that (*I*) should hear and determine the same, and the several proofs adduced to (*me*) in that behalf being by (*me*) duly heard and considered, and it manifestly appearing to (*me*) that the said information (*or* complaint was not proved, (*I*) therefore dismissed the same and adjudged that the said C. D. should pay to the said A. B. the sum of for his costs incurred by him in his defence in that behalf; and (*I*) ordered that if the said sum for costs should not be paid (*forthwith*) the same should be levied on the goods and chattels of the said C. D., and (*I*) adjudged that in default of sufficient distress in that behalf the said C. D. should be imprisoned in the Common Gaol of the said District (*or* County, United Counties, *or as the case may be*) of , at , in the said District *or* County of , (and there kept at hard labour) for the space of , unless the said sum for costs, and all costs and charges of the said distress, and of the commitment and conveying of the said A. B. to the said Common Gaol should be sooner paid; * And whereas the said C. D. being now required to pay to the said A. B. the said sum for costs, hath not paid the same, or any part thereof, but therein hath made default; These are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said C. D., and if within the space of days next after the making of such distress, the said last mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, then that you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale to me (*the Justice who made such order or dismissal as the case may be*) that (*I*) may pay and apply the same as by law directed, and may render the overplus (if any) on demand to the said C. D., and if no such distress can be found, then that you certify the same unto me, (*or* to any other Justice of the Peace for the same District (*or* County, United Counties, *or as the case may be*) to the end that such proceedings may be had therein as to law doth appertain.

Given under my Hand and Seal, this day of , in the year of our Lord , at , in the District *or* County, *or as the case may be*) aforesaid.

J. S. [L. S.]

(Q 2) *See* s. 64.

WARRANT OF COMMITMENT FOR WANT OF DISTRESS IN THE LAST CASE.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of

To all or any of the Constables or Peace Officers in the said District (*or* County, United Counties, *or as the case be*) of , and to the Keeper

of the Common Gaol of the said District (*or* County, United Counties, *or as the case may be*) of , at , in the said District (*or* County) of

Whereas (*etc., as in the last form, to the asterisk,* * *and then thus :*) And whereas afterwards on the day of , in the year aforesaid, I, the said Justice, issued a Warrant to all or any of the Constables or other Peace Officers of the said District (*or* County, United Counties, *or as the case may be*) commanding them, or any one of them to levy the said sum of for costs, by distress and sale of the goods and chattels of the said C, D.; And whereas it appears to me, as well by the return to the said Warrant of distress of the Constable (*or* Peace Officer) charged with the execution of the same, as otherwise, that the said Constable hath made diligent search for the goods and chattels of the said C. D., but that no sufficient distress whereon to levy the sum above mentioned could be found: These are therefore to command you, the said Constables and Peace Officers, or any one of you, to take the said C. D. and him safely convey to the Common Gaol of the said District (*or* County, United Counties, *or as the case may be*), at aforesaid, and there deliver him to the Keeper thereof, together with this Precept; and I hereby command you, the said Keeper of the said Common Gaol, to receive the said C, D. into your custody in the said Common Gaol, there to imprison him (and keep him at hard labour) for the space of unless the said sum, and all the costs and charges of the said distress (and of the commitment and conveying of the said C. D. to the said Common Gaol amounting to the further sum of), shall be sooner paid up unto you the said Keeper; and for your so doing, this shall be your sufficient Warrant.

Given under my Hand and Seal, this day of , in the year of our Lord , at , in the District (*or* County, *or as the case may be*) aforesaid.

J. S. [L. S.]

(R) *See* s. 75.

CERTIFICATE OF CLERK OF THE PEACE THAT THE COSTS OF AN APPEAL ARE NOT PAID.

Office of the Clerk of the Peace for the District (*or* County, United Counties, *or as the case may be*), of

TITLE OF THE APPEAL.

I hereby certify, That at a Court of General *or* Quarter Sessions of the Peace, (*or other Court discharging the functions of the Court of General or Quarter Sessions, as the case may be*), holden at , in and for the said District (*or* County, United Counties, *or as the case may be*), on last past, an appeal by A. B. against a conviction (*or* order) of J. S., Esquire, one of Her Majesty's Justices of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), came on

to be tried, and was there heard and determined, and the said Court of General *or* Quarter Sessions (*or other Court, as the case may be*), thereupon ordered that the said conviction (*or* order) should be confirmed (*or* quashed) and that the said (*Appellant*) should pay to the said (*Respondent*) the sum of for his costs incurred by him in the said appeal, and which sum was thereby ordered to be paid to the Clerk of the Peace for the said District (*or* County, United Counties, *or as the case may be*), on or before the day of instant, to be by him handed over to the said (*Respondent*), and I further certify that the said sum for costs has not, nor has any part thereof, been paid in obedience to the said order.

Dated this day of , one thousand eight hundred and .

G. H.,
Clerk of the Peace.

(S 1) *See* s. 75.

WARRANT OF DISTRESS FOR COSTS OF AN APPEAL AGAINST A CONVICTION OR ORDER.

Canada,
Province of ,
District (*or* County, United Counties, *or as the case may be*), of

To all or any of the Constables or other Peace Officers in the said District (*or* County, United Counties, *or as the case may be*,) of :

Whereas (*etc., as in the Warants of distress*, N. 1, 2, ante, *and to the end of the Statement of the Conviction or Order, and then thus:* And whereas the said A. B. appealed to the Court of General Quarter Sessions of the Peace (*or other Court discharging the functions of the Court of General or Quarter Sessions, as the case may be*), for the said District (*or* County, United Counties, *or as the case may be*), against the said Conviction or Order, in which appeal the said A. B. was the Appellant, and the said C. D. (*or* J. S. Esquire, the Justice of the Peace who made the said Conviction *or* Order), was the Respondent, and which said appeal came on to be tried and was heard and determined at the last General Quarter Sessions of the Peace (*or other Court, as the case may be*), for the said District (*or* County, United Counties, *or as the case may be*,) holden at , on , and the said Court thereupon ordered that the said Conviction (*or* Order) should be confirmed (*or* quashed) and that the said (*Appellant*) should pay to the said (*Respondent*) the sum of for his costs incurred by him in the said appeal, which said sum was to be paid to the Clerk of the Peace for the said District (*or* County, United Counties, *or as the case may*

be), on or before the day of , one thousand eight hundred and , to be by him handed over to the said C. D.; and whereas the Clerk of the Peace of the said District (*or* County, United Counties, *or as the case may be*), hath, on the day of instant, duly certified that the said sum for costs had not been paid;* These are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said A. B., and if within the space of days next after the making of such distress, the said last mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale to the Clerk of the Peace for the said District, (*or* County, United Counties, *or as the case may be*), of , that he may pay and apply the same as by law directed; and if no such distress can be found, then that you certify the same unto me, or any other Justice of the Peace for the same District (*or* County, United Counties, *or as the case may be*), to the end that such proceedings may be had therein, as to law doth appertain.

Given under my Hand and Seal, this day of , in the year of our Lord , at , in the District (*or* County, *or as the case may be*), aforesaid.

O. K. [L. S.]

(S 2) *See* s. 75.

WARRANT OF COMMITMENT FOR WANT OF DISTRESS IN THE LAST CASE.

Canada,
Province of ,
District (*or* County, United Counties, *or as the case may be*), of

To all or any of the Constables, or other Peace Officers, in the said District (*or* County, United Counties, *or as the case may be*) of and to the Keeper of the Common Gaol of the said District (*or* County, United Counties, *or as the case may be*), of , at , in the said County of .

Whereas (*etc., as in the last form, to the asterisk,* and then thus*): And whereas, afterwards, on the day of , in the year aforesaid, I, the undersigned, issued a Warrant to all or any of the Constables and other Peace Officers in the said District (*or* County, United Counties, *or as the case may be*), of , commanding them, or any of them, to levy the said sum of , for costs, by distress and sale of the goods and chattels of the said A. B.; And whereas it appears to me, as well by the Return to the said Warrant of distress to the Constable

(*or* Peace Officer) who was charged with the execution of the same, as otherwise, that the said Constable hath made diligent search for the goods and chattels of the said A. B., but that no sufficient distress whereon to levy the said sum above mentioned could be found; These are therefore to command you, the said Constables or Peace Officers, or any one of you, to take the said A. B., and him safely to convey to the Common Gaol of the said District (*or* County, United Counties of , *as the case may be*), at aforesaid, and there deliver him to the said Keeper thereof, together with this Precept; and I do hereby command you, the said Keeper of the said Common Gaol, to receive the said A. B. into your custody in the said Common Gaol, there to imprison him (*and keep him at hard labour*) for the space of , unless the same sum and all costs and charges of the said distress (and for the commitment and conveying of the said A. B. to the said Common Gaol, amounting to the further sum of ,) shall be sooner paid unto you, the said Keeper, and for so doing, this shall be your sufficient Warrant.

Given under my Hand and Seal, this day of , in the year of our Lord , at , in the District (*or* County, United Counties, *or as the case may be*), aforesaid.

J. N. [L. S.]

(T.)

GENERAL FORM OF INFORMATION OR OF COMPLAINT ON OATH.

Canada,
Province of ,
District (*or* County, United Counties, *or as the case may be*), of

The information (*or* complaint of C. D., of the Township of in the said District (*or* County, United Counties, *or as the case may be*), of , (*labourer*). (*If preferred by an Attorney or Agent, say :* " D. E., his duly authorized Agent (*or* Attorney), in this behalf, taken upon oath before me, the undersigned, one of Her Majesty's Justices of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), of , at N., in the said District (*or* County, *as the case may be*), of , this day of , in the year of our Lord, one thousand eight hundred and , who saith * that (he hath just cause to suspect and believe, and doth suspect and believe that) A. B. of the (*Township*) of , in the said District (*or* County, *as the case may be*) of , within the space of , (*the time within which the information* (*or complaint*) *must be laid,*) last past, to wit, on the day of instant, at the (*Township*) of

in the District (County, *or as the case may be*), aforesaid, did (*here set out the offence, etc.,*) contrary to the form of Statute in such case made and provided.

C. D. (*or* D. E.)

Taken and sworn before me, the day and year and at the place above mentioned.

J. S.

FORM OF ORDER OF DISMISSAL OF AN INFORMATION OR COMPLAINT.

Canada,
Province of ,
District (*or* County, United Counties, *or as the case may be*) of .

Be it remembered, that on , information was laid (*or* complaint was made) before the undersigned, (*one*) of Her Majesty's Justices of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), of , for that (*etc., as in the Summons of the Defendant*) and now at this day, to wit, on , at , (*if at any adjournment insert here:* "To which day the hearing of this case hath been duly adjourned, of which the said C. D. had due notice," both the said parties appear before me in order that I should hear and determine the said information *or* (complaint), (or the said A. B. appeareth before me, but the said C. D., although duly called, doth not appear); whereupon the matter of the said information *or* (complaint) being by me duly considered, it manifestly appears to me that the said information *or* (complaint) is not proved, and (*if the Informant or* (*Complainant*) *do not appear, these words may be omitted*) I do therefore dismiss the same, and do adjudge that the said C. D. do pay to the said A. B. the sum of for his costs incurred by him in defence in his behalf; and if the said sum for costs be not paid forthwith, (*or*, on or before), I order that the same be levied by distress and sale of the goods and chattels of the said C. D. and in default of sufficient distress in that behalf, I adjudge the said C. D. to be imprisoned in the Common Gaol of the said District (*or* County, United Counties, *or as the case may be*), of at , in the said (*County*) of (*and there kept at hard labour*) for the space of , unless the said sum for costs, and all costs and charges of the said distress (and of the commitment and conveying of the said C. D. to the said Common Gaol) shall be sooner paid.

Given under my Hand and Seal, this day of , in the year of our Lord , at , in the District (*or* County, *or as the case may be*), aforesaid.

J. S. [L. S.]

FORM OF CERTIFICATE OF DISMISSAL.

I hereby certify that an information (*or* complaint) preferred by C. D. against A. B. for that (*etc., as in the Summons*) was this day considered by me, one of Her Majesty's Justices of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), of , and was by me dismissed (with costs).

Dated this day of , one thousand

J. S.

GENERAL FORM OF NOTICE OF APPEAL AGAINST A CONVICTION OR ORDER.

To C. D., of etc., and *(the names and additions of the parties to whom the notice is required to be given)*:

Take notice, that I, the undersigned A. B., of , do intend to enter and prosecute an appeal at the next General Quarter Sessions of the Peace, (*or other Court, as the case may be*), to be holden at , in and for the District (*or* County, United Counties, *or as the case may be*), of , against a certain conviction (*or* order) bearing date on or about the day of instant, and made by *(you)* C. D., Esquire, *(one)* of Her Majesty's Justices of the Peace for the said District (*or* County, United Counties, *or as the case may be*), of , whereby the said A. B. was convicted of having or was ordered to pay , (*here state the offence, as in the conviction, information, or summons, or the amount adjudged to be paid, as in the order, as correctly as possible*).

Dated this day of one thousand eight hundred and .

A. B.

MEMORANDUM.—If this notice be given by several Defendants, or by an Attorney, it can easily be adapted,

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FORM OF RECOGNIZANCE TO TRY THE APPEAL, ETC.

Be it remembered, that on , A. B., of , (*labourer*), and L. M., of , (*grocer*), and N. O., of , (*yeoman*), personally came before the undersigned, (*one*) of Her Majesty's Justices of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), of , and severally acknowledged themselves to owe to our Sovereign Lady the Queen, the several sums following, that is to say, the said A. B. the sum of , and the said L. M. and N. O. the sum of , each, of good and lawful money of Canada, to be made and

levied of their several goods and chattels, lands and tenements respectively, to the use of our said Lady the Queen, Her Heirs and Successors, if he, the said A. B., shall fail in the condition endorsed.

Taken and acknowledged the day and year first above mentioned at , before me.

J. S.

The condition of the within written Recognizance is such, that if the said A. B. shall, at the (*next*) General *or* Quarter Sessions of the Peace, (*or other Court discharging the functions of the Court of General or Quarter Sessions, as the case may be*), to be holden at , on the day of next, in and for the said District (*or* County, United Counties, *or as the case may be*), of , enter and prosecute an appeal against a certain conviction bearing date the day of instant, and made by (*me*) the said Justice, whereby he, the said A. B., was convicted, for that he, the said A. B., did on the day of , at the township of , in the said District (*or* County, United Counties, *or as the case may be*), of , (*here set out the offence as stated in the conviction*); And further, that if the said A. B. shall abide by and duly perform the order of the Court to be made upon the trial of such appeal, then the said Recognizance to be void, or else to remain in full force and virtue.

FORM OF NOTICE OF SUCH RECOGNIZANCE TO BE GIVEN TO THE DEFENDANT (APPELLANT) AND HIS SURETIES.

Take notice, that you, A. B., are bound in the sum of , and you L. M. and N. O. in the sum of each, that you the said A. B. at the next General or Quarter Sessions of the Peace to be holden at , in and for the said District, (*or* County, United Counties, *or as the case may be*), of , enter and prosecute an Appeal against a conviction (*or* order) dated the day of (*instant*) whereby you, A. B. were convicted of (*or* ordered, etc)., (*stating offence or the subject of the order shortly*), and abide by and perform the Order of the Court to be made upon the trial of such Appeal; and unless you the said A. B. prosecute such Appeal accordingly, the Recognizance entered into by you will forthwith be levied on you, and each of you.

Dated this day of one thousand eight hundred and

SURETIES.

COMPLAINT BY THE PARTY THREATENED, FOR SURETIES FOR THE PEACE.

Proceed as in the Form (T) *to the asterisk *, then:* that A. B. of the (*Township*) of , in the District (County, *or as the case may be*), of , did, on the day of (instant *or* last past, *or as the case may be*), threaten the said C. D. in the words or to the effect following, that is to say, (*set them out, with the circumstances under which they were used*): and that from the above and other threats used by the said A. B. towards the said C. D., he the said C. D. is afraid that the said A. B. will do him some bodily injury, and therefore prays that the said A. B. may be required to find sufficient Sureties to keep the peace and be of good behaviour towards him the said C. D.; and the said C. D. also saith that he doth not make this complaint against nor require such Sureties from the said A. B. from any malice or ill-will, but merely for the preservation of his person from injury.

FORM OF RECOGNIZANCE FOR THE SESSIONS.

Be it remembered, that on the day of in the year of our Lord , A. B. of (*labourer*), L. M. of , *grocer*), and N. O. of , (*butcher*), personally came before (*us*) the undersigned, (*two*) of Her Majesty's Justices of the Peace for the said District (*or* County, United Counties, *or as the case may be*), of , and severally acknowledged themselves to owe to our Lady the Queen the several sums following, that is to say, the said A. B. the sum of , and the said L. M. and N. O. the sum of , each, of good and lawful money of Canada, to be made and levied of their goods and chattels, lands and tenements respectively, to the use of our said Lady the Queen, Her Heirs and Successors, if he the said A. B. fail in the condition endorsed.

Taken and acknowledged the day and year first above mentioned, at , before us.

J. S.
J. T.

The condition of the within written Recognizance is such, that if the within bounded A. B. (of, etc.), shall appear at the next Court of General or Quarter Sessions of the Peace (*or other Court discharging the functions of the Court of General Quarter Sessions, as the case may be*), to be holden in and for the said District (*or* County, United Counties, *or as the case may be*) of , to do and receive what shall be then and there enjoined him by the Court, and in the meantime shall keep the peace and be of good behaviour towards Her Majesty and all Her liege people, and specially towards C. D. (of etc.), for the term of , now next ensuing, then the said Recognizance to be void, or else to stand in full force and virtue.

FORM OF COMMITMENT IN DEFAULT OF SURETIES.

Canada,
Province of ,
District (*or* County,
United Counties, *or*
as the case may be),
of

To all or any of the Constables and other Peace Officers in the District (*or* County) (*or* one of the United Counties, *or as the case may be*) of , and to the Keeper of the Common Gaol of the said District, (County, *or* United Counties, *or as the case may be*) at , in the said District (or County, etc.,)

Whereas on the day of instant, complaint on oath was made before the undersigned (*or* J. L., Esquire), (*one*) of Her Majesty's Justices of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), of , by C. D., of the Township of , in the said District (County, *or as the case may be*) (*labourer*), that A. B., of, etc., on the day of , at the Township of aforesaid, did threaten (*etc., follow to end of complaint, as in form above, in the past tense, then*): And whereas the said A. B. was this day brought and appeared before the said Justice (*or* J. L., Esquire, one of Her Majesty's Justices of the Peace in and for the said District (*or* County, United Counties, *or as the case may be*), of , to answer unto the said complaint: And * having been required by me to enter into his own Recognizance in the sum of , with two sufficient Sureties in the sum of each, as well for his appearance at the next General or Quarter Sessions of the Peace, (*or other Court discharging the functions of the Court of General or Quarter Sessions, as the case may be*), to be held in and for the said District (*or* County, United Counties, *or as the case may be*), of , to do what shall be then and there enjoined him by the Court, as also in the meantime to keep the Peace and be of good behaviour towards Her Majesty and Her liege people, and especially towards the said C. D., hath refused and neglected, and still refuses and neglects to find such sureties); These are therefore to command you and each of you to take the said A. B., and him safely to convey to the (*Common Gaol*) at aforesaid, and there to deliver him to the Keeper thereof, together with this Precept; And I do hereby command you the said Keeper of the (*Common Gaol*) to receive the said A. B. into your custody, in the said (*Common Gaol*), there to imprison him until the said next General or Quarter Sessions of the Peace (*or the next term or sitting, the said Court discharging the functions of the Court of General or Quarter Sessions, as the case may be,*) unless he in the meantime find sufficient sureties as well for his appearance at the said Sessions (*or* Court), as in the meantime to keep the Peace as aforesaid.

Given under my Hand and Seal, this day of , in the year of our Lord , at , in the District (*or* County, *or as the case may be*), aforesaid.

J. S. [L. S.]

ADDITIONAL FORMS.

The following forms are not in the Statute relating to Summary Convictions, but will be found useful in cases to which they apply:

ADJUDICATION FOR A JOINT OFFENCE WHERE THE PENALTY IS SEVERED AMONG THE DEFENDANTS.

Canada,
Province of ,
District (*or* County, United Counties, *or as the case may be*), of

Be it remembered, (*stating the conviction*); and I adjudge the said A. B., E. F. and G. H. for their said offence to forfeit and pay the sum of , to be paid and applied according to law, and also to pay to the said C. D. (*the Complainant*) the sum of for his costs in this behalf in the following proportions, that is to say, the said A. B. for his said offence the sum of and the sum of for costs, and the said E. F. for his said offence the sum of and the sum of for costs, and the said G. H. for his said offence the sum of and the sum of for costs; and if the said several apportioned sums be not paid on or before next by the said A. B., E. F. and G. H. respectively, I adjudge each of them, the said A. B., E. F. and G. H., who shall make default in that behalf severally to be imprisoned in the at , in the said (*County*) of , for the space of , (*or if imprisonment be different to each, say*), I adjudge the said A. B., E. F. and G. H. to be severally imprisoned in the at , in the said (*County*) of , for the following periods respectively, that is to say, the said A. B. for the space of , the said E. F. for the space of , and the said G. H. for the space of , unless the said several sums so adjudged to be paid by the person so making default, (*add also as to costs and charges of conveying to gaol, if Statute authorizes such costs*), shall be sooner paid, but not so as that either of them shall be imprisoned or kept in prison for the default of the other or others of them.

ADJUDICATION UPON SEVERAL DEFENDANTS FOR A SEVERAL OFFENCE IN ONE CONVICTION, WHERE THE PENALTY IS THE SAME TO EACH.

Canada,
Province of
District (*or* County, United Counties, *or as the case may be*), of

Be it remembered, (*stating the conviction*); and I adjudge each of them, the said A. B., E. F. and G. H., for his said offence severally to forfeit and pay the sum of , and each of them also to pay to C. D. the sum

of for his costs in this behalf; and if the several sums so to be paid by each of them aforesaid, be not paid by the said A. B., E. F. and G. H. respectively on or before (*etc.*), I adjudge each of them, the said A. B., E. F. and G. H., who shall make default in that behalf, severally to be imprisoned in the Common Gaol at , in the (*County*) of , for the space of , unless the said several sums so adjudged to be paid by the person so making default, (and the costs and charges of conveying such person to the Common Gaol), (*if such costs are authorized by Statute otherwise omit them*), shall be sooner paid, but not so as that either of them, the said A. B., E. F. and G. H., shall be imprisoned or kept in prison for the default of the other or others of them.

NOTE.—When the penalty imposed on each defendant is different in amount the form may be varied accordingly.

CONVICTION FOR A SECOND OR SUBSEQUENT OFFENCE.

(*Follow the Form as in cases of conviction, but add before the first adjudication the following averment of the previous conviction*): And whereas it is now duly proved before me the said Justice that the said A. B. was heretofore, to wit, on the day of , in the year of our Lord , duly convicted before M. N., one of Her Majesty's Justices of the Peace in and for the (*County*) of , for that he did on the day of , at the (*place*), (*state the offence, as in former conviction*), and the said A. B. was thereupon adjudged for his last mentioned offence to (*here state the adjudication*): And I adjudge the said A. B. for his said (*second or third*) offence, of which he has been so convicted this day as aforesaid to pay, etc. (*proceed as in cases of ordinary conviction*).

ADJUDICATION OF CONSECUTIVE IMPRISONMENT.

Venue, (*as in ordinary cases*).

Be it remembered, (*as in ordinary cases*).

And I do adjudge the said A. B. for his said offence to be imprisoned in (*state place of confinement,*) for the space of , which I hereby award and order shall commence at the expiration of a certain other term of imprisonment to which the said A. B. has been previously duly adjudged and sentenced (*by me*) for another offence upon the conviction in that behalf—(*if the party is in actual prison at present*) add, and is now undergoing punishment—(*if it is a penalty adjudged*) say, unless the said several sums shall be sooner paid.

CHAPTER I.

Act, 32-33 Vic. Chapter XXXI.

AN Act respecting the duties of Justices of the Peace out of Sessions, in relation to Summary Convictions and Orders.

This Act was subsequently extended to Manitoba, Prince Edward Island, District of Keewatin, except so much of the Act or of any Act amending it, as gives any appeal from any conviction or order adjudged or made under it;

To the North-west Territories with similar provisions.

The several Acts under preamble to Act, relating to Indictable Offences, *Ante*—and extended to British Columbia, 37 Vic. c. 42.

This Act refers to offences or acts over which the Parliament of Canada has jurisdiction, and does not interfere with or relate to offences, which by Statutes of separate Provinces are made punishable by laws of the particular Province providing for procedure, punishment and trial, and the convictions and proceedings in regard to the latter are to be regulated by the Common Law, applicable to such, or by the particular Act under which proceedings are taken.

INFORMATION.

Before whom may be laid—Form. *See* sections 1, 91, 94.

By whom may be laid. *See* section 25.

No objection to be allowed on account of defect or variance in Information, etc. *See* section 5.

Time and place—statement of certain variances as to

—between information and evidence, when not material. *See* section 21.

Variances—if party misled by—Justice may adjourn. *See* section 22.

Complaint—when need not be on oath. *See* sections 24, 25.

Complaint or Information to be for one matter only. *See* section 25.

Limitation of time for making Complaint or laying Information. *See* sections 26, 79.

Decision of the Case—Dismissal of Case. *See* section 41.

Complaint—when need not be in writing. *See* section 20.

Aiders and abettors of Offences punishable on Summary Conviction, how liable. *See* section 15.

Description of property of Partners, Municipal Corporations, etc., in any information or complaint, or proceedings therein. *See* section 14.

An information is to be laid before the Justice having jurisdiction in the Territorial Division—which means District, County, Union of Counties, Township, City, Town, Parish or other Judicial Division. *See* section 94.

The Magistrate must be careful to see that the Information is on a matter over which he has jurisdiction, otherwise he will render himself liable, if a person is arrested on a warrant in a matter over which he has not jurisdiction.

The information requires him to act, but he can only act in such matters over which he has jurisdiction to act, when information or complaint is made.

The defendant, a Justice of the Peace, issued a warrant to arrest the female plaintiff on an information, stating that she did "unlawfully take and carry away from his (the informant's) protection, her daughter, S. W." The Justice professed to act under the Dominion Statute, 32-33 Vic. c. 20, s. 56. It was held by the Supreme Court of New Brunswick, that as the defendant had no jurisdiction to issue a warrant on the information, he was liable to an action of trespass, and in such case, the Justice having no jurisdic-

tion whatever over the matter, the question of reasonable and probable cause did not arise: *Whittier & wife* v. *Brewster*, 2 Pug. 243.

Except where some particular Act requires it, the information or complaint in the first instance does not require to be under oath, see section 24; but by section 25, in cases where a *warrant* is to be issued to apprehend the party, the information or complaint must be substantiated by oath or affirmation of the informant, or by some witness or witnesses on his behalf before the warrant issues.

Information, by whom may be laid.

The information may be laid or made by informant in person, or by his Counsel, or Attorney, or other person authorized in that behalf.

It would appear however, that where the grievance complained of, is of a personal nature and in no way affecting the public, the information should be made by the individual affected, and where any particular Act requires the information or complaint to be made by a particular person, it must be so done. In cases of assault, under Act, 32-33 Vic. c. 20, s. 43, it is contemplated that the party aggrieved should make the complaint, which however, may be preferred by another on his behalf.

In matters affecting the public policy or morals, a general power is invested in all persons to make information or complaint, as in cases of Indictable Offences. See remarks of L. Cockburn, in case of *Cole* v. *Coulton*, 2 E. & E. 694, from which it may be inferred that where the grievance complained of, is in respect to an individual, and the penalty is by way of individual redress, the information must be by the party aggrieved, but otherwise where the offence is one against public decency and propriety.

An information by a person not authorized to make it cannot be acted upon, and is as if no information laid.

Second Offence—How Party must be Charged.

When a person is sought to be convicted, as for a second offence, as of selling liquor without license, when the punishment is greater, he must be charged in the information with the commission of a second offence, and it must be also proved that at the time of the information, he had been previously convicted: *Reg.* v. *Justices of Queen's*, 2 Pug. 485.

The averment as to the second offence should also be stated in the conviction.

The true meaning of Acts imposing a higher penalty for a second offence, is that the second offence should have been committed *after* a previous conviction, where a person wilfully persists in violating the law.

By section 72, a copy of conviction certified by the proper officer of the court or proved to be a true copy, shall be sufficient evidence to prove a conviction for the former offence, and the conviction shall be presumed to have been unappealed against, until the contrary is shewn.

Statement of Time of Committing Offence.

In convictions the precise day need not be named, either in the information or evidence, but it is sufficiently certain if the fact be alleged to have happened *between* such a day and such a day; provided the last of the days specified, be within the limited time: Paley on Convictions, 85.

It is also unnecessary to prove the offence to have been committed on the day alleged in the information, as this is a variance provided for by sections 5, 21, even if it was ever material.

Appearance and Defence by Counsel or Attorney.

By section 30, the party against whom a complaint is made or information laid, shall be admitted to make his full defence, and answer thereto, and to have the witnesses examined and cross-examined by Counsel or Attorney on his behalf.

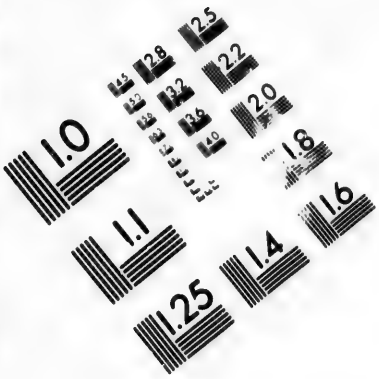
Although in cases where the Justice or Justices are acting ministerially, as in the cases of Indictable Offences, it may be essential for the purposes of Public Justice that the examination should be private, yet where the Magistrate is acting judicially the practice of excluding an Attorney would be unreasonable, and where the statute expressly allows the party to defend by Counsel, the Magistrate is bound to permit this being done and the person may insist upon his right; although the defendant has the right to make his defence by Counsel, this does not give him the right to have a case adjourned in order to procure such assistance, although he had no opportunity of procuring it: *Reg.* v. *Biggins*, 5 L. T. N. S. 605, Q. B.; but where no great inconvenience or prejudicial delay is occasioned, the Magistrate ought to give a party a reasonable time to procure Counsel if he desires it.

Personal Appearance.

It was determined in *Russel* v. *Wilson*, 1 Ell. & Bl. 489, that where the legitimate object of the summons to appear, did not render the personal appearance of party necessary, that he could appear by Counsel or Attorney.

It may however, be questioned whether the personal appearance of the party, in cases where information is made, can be dispensed with by an appearance by Counsel or Attorney, as the court in case above cited, make reference to the words of the English Statute, 11-12 Vic. c. 43,—the words of which are "but if both parties appear either personally, *or by their respective Counsel or Attornies*" the Justices are to hear and determine, etc., which words are omitted in Canada Statute.

The Dominion Act enables both parties to have the assistance of Counsel or Attorney, but would seem not to affect the necessity of personal appearance of party, in cases where information is made. If, however, the object might be better answered if the defendant appeared by Counsel, as in some cases where questions of law are involved, it would seem sufficient that the party so appeared, and this would depend on the exigency of the summons.



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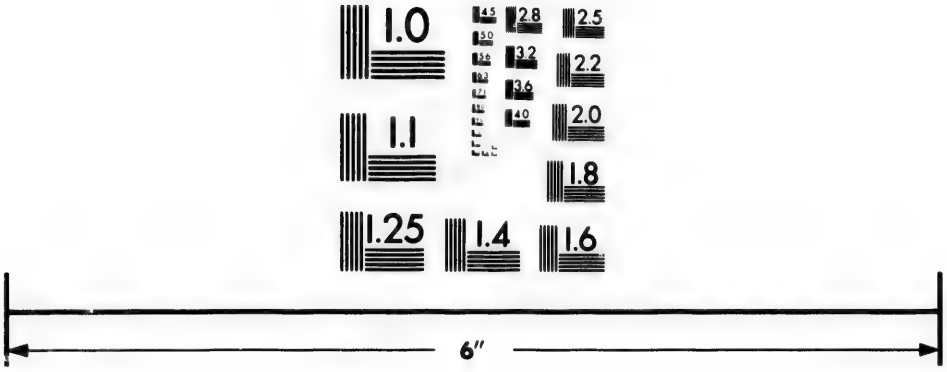

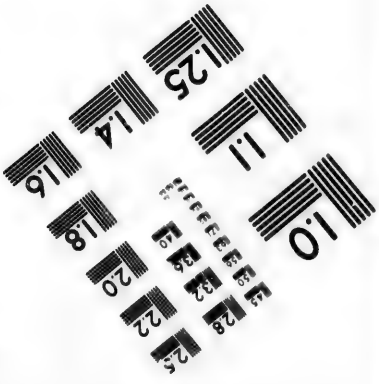

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In cases where a complaint is made and an order is required to be made on proof of liability of party, the party, it would seem, may appear by Counsel or Attorney, as the form of order given in Schedule, is on default of appearance of party himself personally, or by Counsel or Attorney; in cases where a summons has been issued, and sections 46-47, contemplate an appearance by Counsel or Attorney in authorizing proceedings *ex parte*, on failure of defendant appearing personally, or by Counsel or Attorney, or in adjourning case in default of such appearance.

Waiver of Objections.

If a party appears before Justices and allows a charge, which they have jurisdiction to hear, to be proceeded with without objecting, he waives the want of an information or a summons: *Reg.* v. *Shaw*, 10 Cox, C. C. 66, 11 Jurist, N. S. 415; but this would only be where the Magistrate has jurisdiction over the matter and person.

Where the complaint or information is only a preliminary step to authorize the Justice to issue a summons, the appearance of the party without objection would be a waiver of any objections, he otherwise might make to want of information or complaint.

Consent will not give jurisdiction to a Magistrate where none exists, but an objection may be waived and the cause proceeded with by consent of parties.

Advantage of want of jurisdiction may be taken at any time: *Rex.* v. *Chilverscoton*, 8 T. R. 178.

Where power is given by an Act, to a Justice of the Peace to issue a summons, upon complaint made on oath, and the party to be summoned appears and defends the suit without any summons being issued, he cannot afterwards object that there was no complaint on oath. This being only a preliminary step to authorize the summons to issue: *Ex parte*, Wood; 1 All. 422.

Where a defendant's Counsel appears on the day of trial, and raises an objection that the information is not under oath, but does not ask for an adjournment, but proceeds in

the matter and cross-examines the witnesses, and it does not appear that the defendant had been in any way misled or prejudiced by the alleged defect in the information, it was held by Supreme Court of N. B'k: *Reg.* v. *McMillan*, 2 Pug. 110, that this defect was cured; (the provisions in respect of defect in N. B'k Act being similar to Canada Act.)

Jurisdiction of Justices when no Information laid.

Where the Magistrate has jurisdiction in the place and over the matter and person, it is not the information or complaint which gives him jurisdiction, but such, requires him to exercise the jurisdiction which he has, if the party is before him and informed or complained against, even *instanter*. In cases of search warrants the foundation of the Magistrate's jurisdiction to issue a warrant is the information, and is necessary to justify him in acting, and must be founded on an information which discloses a charge of felony, or contains a statement of facts from which it may fairly be inferred that a felony has been committed.

In a late case: *The Queen* v. *Hughes*, 4 L. R., Q. B., Div. 614, the consideration of the necessity of an information and the jurisdiction of Justices on appearance of party in summary proceedings was very fully had:—H. a police constable, procured a warrant to be illegally issued without a written information or oath, for the arrest of S. upon a charge of "assaulting and obstructing him (H.) in the discharge of his duty." Upon such warrant S. was arrested and brought before the Justices, and was, without objection, tried by them and convicted, H. was afterwards indicted for perjury, committed on the trial of S. and convicted, *Held*, that H. was rightly convicted, notwithstanding there was neither written information nor oath to justify the issue of the warrant, and that the Justices had jurisdiction to hear the charge, though the warrant upon which the accused was brought before them was illegal.

This case exhausts the subject and very strongly lays down the law, that where the Magistrate has jurisdiction

to hear the charge, although no information in writing or on oath made, and although contrary to the directions of the Statute, illegally issued a warrant upon which the party was brought up, and the Justices tried the charge, and took evidence in support of it, if they are acting within their jurisdiction, they have power to hear and determine.

If, however, a Statute makes it a condition, *precedent* to taking any further step beyond the information, that the matter of the information should be deposed to by oath of the informer, or some other credible witness, and no such deposition has been made, then the Magistrate, it may be, might not have power to proceed: See *Reg.* v. *Sutton*, 5 Q. B., 493.

Huddleston, J., in delivering judgment in case of *Reg.* v. *Hughes*, above cited, after reciting the several sections of the English Acts, which are similar in their provisions to the Canada Statute in this respect, says: "The object of all these provisions is to bring the party accused before the Justices to enforce his presence, and to enable them to deal with him in his absence, but when he is before them, the Justices are required and shall proceed to hear and determine."

The same Judge says "the information on oath is not necessary to give the Justices jurisdiction to try, though it is necessary to give them jurisdiction to issue a warrant to apprehend; the jurisdiction to try, arises on the appearance of the party charged, the nature of the charges, and the charging of the defendant."

If, however, a warrant is illegally issued, the Magistrate so issuing it would be liable in trespass, although the jurisdiction to hear and determine would not be affected thereby; and if the defendant objected to the progress of the proceedings, because not knowing the charge and being prepared to meet it, the Justices should adjourn in order to afford him time to make his defence, but it is clear that if a party is present at the time of proceedings and heard the charge, and witnesses, and has not asked for any further time to bring forward his defence, if he had any, his thus acting, precludes him from raising the objection to pre-

liminary proceedings: (see *Rex* v. *Stone*, 1 East. 639, 648) and that the want of an information in writing, or on oath, would not deprive the Justices from acting in cases where they have jurisdiction, the information not being necessary to give the Justices jurisdiction to try.

"Principle and the authorities seem to shew, that objections and defects in the form of procuring the appearance of a party charged, will be cured by appearance; the principle is, that a party charged should have the opportunity of knowing the charge against him and be fully heard before being condemned; if he has the opportunity, the method by which he is brought before the Justice cannot take away the jurisdiction to hear and determine, when he is before them": *per* Huddleston, B., in *Reg.* v. *Hughes*.

In the same case, Denman J., applies the same principle to cases of Indictable Offences. He says: "It was contended that even under 11-12 Vic. c. 42"—(similar to Canada Act) "the right of the Magistrates to enquire, would not be well founded in the absence of an information in writing or upon oath; but I am of opinion that there is nothing in the Act to destroy the jurisdiction of the Magistrates to enquire into a charge of an Indictable Offence where the person charged is actually in custody before them."

It will be observed that many of the cases which lay down the law, that it is necessary to have an information in writing or under an oath, have reference to the statement of the information in the old form of convictions, where it of course became necessary to shew in that part of the conviction all the ingredients to give jurisdiction. See remarks of Huddleston, B., in *Reg.* v. *Hughes*.

The form of conviction given by the Act omits the information.

Lopes, J., sums up the law in such cases in his short judgment in *Reg.* v. *Hughes*. He says:—"I think the warrant in this case was mere process for the purpose of bringing the party complained of before the Justices, and

had nothing whatever to do with the jurisdiction of the Justices. I am of opinion, that whether Stanley was summoned, brought by warrant, came voluntarily, was brought by force, or under an illegal warrant, is immaterial, being before the Justices, however brought there, the Justices, if they had jurisdiction in respect of time and place over the offence, were competent to entertain the charge." The dictum of Holt, C. J., in *Rex.* v. *Fuller*, 1 Ld. Raymond Rep. 509, recognizes the legality of a conviction upon an information *instanter*.

In the case of *Blake* v. *Beech*, 1 L. R. Ex. D., 320. The respondent laid an information before a Justice that a house was "kept and used as a common gambling house," within the meaning of the "Act to amend the law concerning games and wagers," (8 & 9 Vic., c. 109), and thereupon the Justices granted a warrant, under which the appellant was arrested at the house in question. He was brought before two Justices and charged under the "Act for the suppression of betting houses," (16 & 17 Vic., c. 119), s. 3, as "the person," who "having the management of a room" in the house, used it "for the purpose of betting with persons resorting thereto." No information was laid, nor was any summons issued under the last named Statute; and the appellant did not waive this omission. The charge having been heard he was convicted, and a penalty was imposed. *Held*, (per Cleasby, B., and Grove, J.; Field, J., dissenting) that the conviction was wrong and must be quashed.

This case may be considered as partially overruled, or at least modified by the decision in *Reg.* v. *Hughes*, above cited, although a distinction may be drawn, that the party in the case of *Blake* v. *Beech*, was informed against under one Statute, and proceeded against upon another; but according to the judgment of Field, J., confirmed in *Reg.* v. *Hughes*, this objection would not be available under the circumstances, if the party being before the Justice, as in the case of *Reg.* v. *Hughes*, and the Justice having jurisdiction over the offence and person, time and place.

In 2 Hawk. 28, it is said, "it seemeth plain from the nature of the thing, that there can be no need of process where the defendant is present in court, but only where he is absent."

Defendant must be Legally Charged.

A conviction will be bad which convicts a man of an offence of which he has not been legally charged.

The appellant was convicted summarily by Justices under Statute, 10 11 Vic. c. 89, s. 29, on a charge of drunkenness and riotous behaviour. The Justices held the riotous behaviour not proved, but convicted him of drunkenness, and fined him under Statute, Jac. 1, c. 7, s. 3. *Held*, that the conviction was bad, and that the defect was not one which could be cured under Statute, 11-12 Vic. c. 43, s. 1; (similar to the Canadian Act, sec. 5): *Martin* v. *Pudgeon*, 1 Ell. & Ell., 778. In this case the appellant had been summoned for an offence under one Act, and convicted of another and different offence under another Act, which imposed for the offence a different punishment from that imposed by the Act, under which he was summoned, and was convicted of a distinct statutory offence.

When there is but one Act against which the offence can be committed, a variance in statement of offence and proof, will not render the conviction bad.

In *Reg.* v. *Harshman*, New Brunswick Supreme Court, 1 Pug. 317, it was held no ground for quashing a conviction for selling spirituous liquors without license, that the information on which it is founded and the warrant issued thereon, state the offence to be selling "liquor" without license, or selling contrary to the Acts of Assembly, when there is but one Act to regulate the sale, or selling to divers persons unknown to the informant—provided the evidence proves a sale to a particular individual, and no objection was taken by the defendant at the trial to the variance between the information and the proof, and it does not appear that he was in any way misled by it.

In same court, *Ex parte*, Dunlop, 3 All., 281, on an information for selling spirituous liquors without license, con-

trary to the By-laws of the Town of Moncton, the illegal sale was proved, but there was no evidence of the By-laws, and the Justices convicted the defendant of selling contrary to the Statute to regulate the sale of spirituous liquors, 17 Vic. c. 15, N. B'k. *Held*, that as it did not appear that the defendant was misled or had any defence on the merits, the variance between the information and conviction was not fatal since the Revised Statutes, c. 38, s. 1, (similar to Canada Act, s. 5.)

In this case there was but one offence charged, and it was an offence against an Act of Assembly for which defendant was punishable. Whatever the By-laws of Town of Moncton might have provided, and he was not misled by the charge, and might have shewn or availed himself of a defence, if he had any, as not being against the By-laws; and the charge was virtually made and proved as an offence against the Act of Assembly, and is not analogous to the case above cited, of *Martin* v. *Pudgeon*, and would seem properly covered by the provisions of section in Act relating to variance, etc.

Complaint.

The Statute makes mention of complaint as well as information—the latter term being properly confined to the commission of an offence, and the term "Complaint" to those cases where the person charged, is liable to have an order made upon him to pay money, or to do some other act in obedience to some Act. The forms of conviction on information and the forms of orders are to be borne in mind, and are set forth in Schedule to Act.

It was decided in *Ex parte* Wood, 1 All. 422, New Brunswick Supreme Court, that where power is given by an Act to a Justice of the Peace to issue a summons, upon complaint made, on oath, and the party to be summoned appears and defends the suit without any summons being issued, he cannot afterwards object that there was no complaint on oath, this being only a preliminary step to authorize the summons to issue; the words of the Statute in

this case being—"Upon the appearance of the master or owner, or in default thereof, on due proof of being summoned,"—examination, etc., may be proceeded with—the appearance of the party gives the Justice jurisdiction to proceed in such a case.

Conditions Precedent to Justice Acting.

Where the Statute under which the Justices proceed gives jurisdiction upon certain conditions, these must be shewn to have been strictly complied with.

A Justice has no jurisdiction to try an assault summarily, unless it is given him by Statute, and he must strictly pursue the authority given, and in order to give him jurisdiction, under the Statute of Canada, 32-33 Vic. c. 20, s. 43, it is necessary that the complainant should request him to proceed summarily, and this request should be made at the time of the complaint. The words of the section are: "praying him to proceed summarily."

Where the proceedings did not shew whether such request was made or not, but it was proved that the complainant was present at the return of the summons and gave evidence against defendant, if any intendment could be made, it might be presumed, complainant had made such request. *Reg.* v. *O'Leary*, 3 Pug., 264, N. Bk.

In a case on appeal under Summary Conviction Act, where the question of jurisdiction in such case was raised, the Judge of the County Court in delivering judgment said:—"As to the necessity of jurisdiction appearing on the face of the conviction, this if necessary, may I consider, be inserted in the conviction on amendment of same, inasmuch as the jurisdiction of the Justice is founded on the information and prayer. The Justice had jurisdiction to try the complaint by prayer being made in the information, that jurisdiction continued up to the time of making the decision or adjudication, and the not inserting it in the conviction was, (if necessary to insert it) a defect which I think is clearly amendable, and which the Court would be required by the Statute to amend." *The Queen on complaint, etc.*, v. *Harper*, Carleton County Court, 1875.

In this case the complaint contained the prayer of complainant to proceed summarily, and it would seem that if the Justice followed the form of conviction, and it was shewn even on proceedings by *certiorari*, that he had jurisdiction by the return of the information containing the necessary request, that such conviction should be held good.

The question of jurisdiction is determinable at the commencement, not at the conclusion of the inquiry. Per Denman, C. J., in *Reg.* v. *Bolton*, 1 Q. B., 66.

The power of Justices to commit summarily being confined by Statute, all Statutory requirements must be strictly followed. Where penalties are not the subject of summary conviction, the remedy is only by action.

Defendants—Married Women—Infants.

Married women who commit an offence against any particular Act, where they do it voluntarily and of their own act, are liable in common with others to be proceeded against, although in cases where they act under the coercion of their husbands, the same principles of excuse would apply in summary proceedings as in Indictable Offences. What is a coercion actual or implied, must be determined by the evidence.

So also females are liable as well as males, and infants, if of sufficient age to incur responsibility, may be proceeded against.

Aiders, Abettors, etc.

Where an offence punishable on Summary Conviction has been actually committed, all persons who have aided, abetted, counselled, or procured the commission of same, may be proceeded against and convicted for the same.

Formerly in England in cases of felony, the accessory could never be tried without his own consent before the conviction or outlawry of the principal, unless they were both tried together. The jury were charged to enquire

first of the guilt of the principal, and if they thought him innocent the accessory was of course acquitted. The Act 31 Vic., c. 72, Canada Statutes, respecting accessories to and abettors of Indictable Offences, has made provisions for the trial of accessories either before or after the fact, making them the same as principal offenders.

As in all offences below felony there cannot strictly speaking be any accessories, section 15, makes the aiding, abetting, counselling, or procuring, a substantive offence to be proceeded against as the party guilty, who may be tried either jointly with the principal offender, or before or after his conviction and is punishable in the same degree with the principal. The commission of the offence would in all cases be required to be shewn as having been done by the party who has been aided, abetted, etc., and no rule can be laid down as to the degree of incitement and the force of persuasion, requisite to constitute the offence of aiding, abetting, counselling, or procuring. Any degree of direct incitement with the actual intent to procure the consummation of the illegal object, is sufficient to constitute the guilt; and therefore it is unnecessary to shew that the crime was effected in consequence of such incitement, and that it would be no defence to shew that the offence would have been committed, although the incitement had never taken place. Roscoe, C. Ev., 184; 2 Starkie, Ev. 9.

Servants may be aiders and abettors in the commission of an offence by their masters, and masters in like manner liable for commission of offences by their servants.

If the keeper of a place of public resort, instructs his servant to manage it in such a way as to be a violation of Statute, and the servant does so, the master is guilty of an offence; and the servant is guilty of aiding and abetting him. See *Wilson, Appellant*, v. *Stewart, Respondent*; 3 B. & S. 913.

Where also a person has power to prevent an offence and does not exert that power, he is held in cases of misdemeanour equally guilty with him who actually commits

the offence. So where a party has the power, and it is his duty to prevent an offence punishable by Summary Conviction, and is present, and does not exercise his power, he will be held guilty as an aider and abettor. The actual offender may be the servant, but the master standing by and seeing the offence committed without interfering, when it is his duty to do so, will be liable as an aider and abettor. See *Howells* v. *Wynne*, 15 C. B. N. S., 3.

This section 15, provides for the proceedings against aiders, abettors, etc., and allows same to be had where the principal offender may be convicted, or in that place in which the offence of aiding, etc., was committed.

Limitation of Time for Making or Laying Information or Complaint.

Section 26, provides that where no time is limited by any special enactment in any Statute relating to the particular case for laying the information or complaint, the time must be laid within *three* months from the time when the *matter of information or complaint arose*, except in Saguenay County, where twelve months is the limitation.

Section 79, provides that actions for penalties on Justices neglecting to comply with provisions of the Act, as to returns, are limited to six months after cause of action.

By the Interpretation Act, 31 Vic. c. 1, the term "month" shall mean a calendar month.

Joint Information.—Several Defendants.

The provision in section 25, that every information shall be for one offence only, does not prevent the information being against several persons, charged with the same offence, committed at one and the same time and place.

Where there are general charges against several defendants, but the evidence against them all is the same, and they are all tried at the same time, and each is separately convicted, no objection having been raised at the time by the defendants to the cause of proceeding, such convic-

tions cannot afterwards be objected to upon the ground that each defendant should have been tried separately: *Reg.* v. *Biggins*, 5 L. T., N. S. 605, Q. B.

By 1 & 2 Wm. IV., c. 32, s. 3, if any person whatsoever shall kill or take any game, or use any dog, gun, etc., for the purpose of killing or taking any game on a Sunday—such person shall, on conviction, forfeit for every such offence a penalty not exceeding £5.

At Petty Sessions an information was laid against two defendants, charging that they did use a gun and kill two pheasants, contrary to the above Statute; each claimed to be tried separately, in order to call the other as a witness; the Justices refused, and heard the charge against both together, and convicted them, and a conviction was drawn up separately against each defendant, imposing a penalty of £3.

Held, that it was in the discretion of Justices whether they would hear the charge separately or not; that as the penalty was imposed on every person acting in contravention of the Statute, each defendant was separately liable to the whole penalty, and that separate convictions were right: *Reg.* v. *Littlechield*; *Reg.* v. *Heslop*, 6 L. R., Q. B., 293.

Lush, J., in delivering judgment in this case says: "It is perfectly clear that two or more persons may commit an offence under sec. 3 of 1 & 2 Wm. IV. c. 32. That being so, the information is not wrong for being joint; it charges that George Littlechield and William Heslop did unlawfully use a certain engine, to wit, a gun for the purpose of killing game; that is clearly an act which may be committed by two persons jointly. They were summoned together, and at the hearing before the Justices each claimed to be tried separately. Had they a right to demand a separate trial? There is no case which says they have this right and the convictions cannot be impeached on this ground. The other objection is, that although the two persons were jointly charged, they were separately convicted. I think they might be separately convicted, because the penalty is separate. The imprisonment of one person cannot be the

imprisonment of the other; instead, however, of there being one conviction convicting them both, and subjecting each to a penalty, there are separate convictions; but from this, no possible injustice or injury can result."

Harman, J., says, in same case: "The first question is whether a person is entitled as of right to be tried separately, in order that he may call another person, with whom he is jointly charged, as a witness. It is the experience of everybody that this is a matter of discretion, and that a person jointly charged with another has no such right as is here claimed."

See also *Mayhew* v. *Wardley*, 14 C. B. N. S. 550.

Paley on Convictions, 5 Ed. p. 262, lays down the rule thus: "If either the penalty imposed by the Act upon each person convicted, even where the offence would in its own nature be single, or if the quality of the offence be such, that the guilt of one person may be distinct from that of the others, in either of these cases the penalties are several."

See also *Rex.* v. *Clarke*, Cowp. 610-612; *Rex.* v. *Hube*, 5 T. R., 542.

Several Forfeitures.—Amount to be Paid to Party Aggrieved.—Application of Other Sums.

See section 89.

Several Offences.—Joint Conviction.

By section 25, the complaint or information is required to be laid for one offence only, and not for two or more offences, and the conviction accordingly must follow the information and be for one offence, but where the penalty it cumulative—several Acts forming one offence, the information may be for same. In *Reg.* v. *Scott*, 4 B. & S. 368, a conviction, under Statute, 19 Geo. II. c. 21, s. 1, charging that the defendant did profanely curse one profane curse (setting it out) twenty several times repeated and adjudging him for his said offence, to forfeit the sum of £2, being

a cumulative penalty, being at the rate of 2*s.* for repetition of the oath, was held good. In this case, Blackburn, J., says: "Jurors' Act" (similar to Canada Act) "applies where there is an information for more than one offence, and here there is but one, viz.: that the defendant swore many profane oaths on one and the same occasion."

A conviction of two persons jointly for offences *ex necessitate rei*, several, will be void: *Morgan* v. *Brown*, 4 Ad. & Ell. 515. So also the rule is the same in the case of a single conviction of one person for two distinct offences: *Newman* v. *Bendyshe*, 10 Ad. & Ell. 11.

In this latter case the party was charged of keeping his house open for the sale of beer—selling beer—and suffering the same to be drunk and consumed in the house at an unlawful time, and he was convicted as upon a single offence. These separate Acts are made by the Act under which proceedings were taken, to be separate offences.

Name of Party Unknown.

Section 8. See remarks *Ante*, on Act relating to Indictable Offences; section 17.

Place—Statement of.

Where the jurisdiction of the Justices appeared upon the conviction, which was in form prescribed by 1 Rev. Stat., c. 138 N. Bk., and the place of sale (of liquors) spoken of at the trial, appeared to be known to all parties, and no objection was then made that it was not within the jurisdiction of the Justices. *Held*, that the jurisdiction sufficiently appeared. *Ex parte*, Dunlop, 3 All., 281 N. Bk.

The form of information requires the place to be stated in the margin, and the jurisdiction of the Justice is thus shewn as being exercised in his locality, and as to the commission of the offence within the bounds of his jurisdiction, this is a matter of evidence on the trial.

Statement of Offence.

Section 1, mentions that the matter of the information or complaint shall be shortly stated in the summons, but it should be stated with such sufficient certainty, that the matter thereof is capable of being well ascertained, in event if necessary, to be substantiated under oath in case of a warrant being required to be issued, as the warrant requires the party to answer to the "said information or complaint."

If the information contains substantially a statement of an offence upon which the magistrate was empowered and bound to act, it will be considered sufficient. A statement of the facts which constitute the offence will be considered substantially a complaint of the offence.

See in *re* Pelham, 5 H. & N. 30.

CHAPTER II.

SUMMONS.

Service. See section 2.

Proof of Service. See section 3.

Application for Order, *Ex parte*, summons need not be issued. See section 4.

Warrant.

If summons disobeyed, Justice may issue a warrant.

Warrant may issue in first instance on information supported by oath, etc.

Copy of warrant to be served on party. See section 6.

Warrant to be under hand and seal. To whom directed and what to contain. See section 8, and remarks under sections 12-17, in Chapter on Indictable Offences.

Duration of warrant, and how to be executed. See section 9, and remarks under sections 12-17, on Chapter relating to Indictable Offences. *Ante.*

Execution of warrant to be by constable or peace officer, and to be executed within limits of Justice's jurisdiction, and notwithstanding the place in which it is executed, be not the place for which he is a constable or peace officer. See section 10.

See remarks under sections 19-20, on Chapter relating to Indictable Offences. *Ante.*

Backing Warrants.

See section 11, and remarks under section 23, on Chapter relating to Indictable Offences.

Objections.

No objection allowed for want of form, but adjournment in certain cases, and on what conditions. See section 12, and remarks under Chapter 1 of this Act, and under section 11 on Chapter relating to Indictable Offences. *Ante.*

Defendant Not Appearing when Bound by Recognizance—Proceedings.

See section 13.

Witnesses.—Competency of.

Summons to person likely to give evidence material. See sections 16, 90.

Warrant—if such person fails to appear, and backing same. See section 17, and remarks, *ante*, under section 23, on Chapter relating to Indictable Offences—as to competency, etc.

Warrant may issue in first instance. See section 18.

Competent witness. See section 45.

Commitment for refusal to give evidence. See section 19, and remarks, *ante*, under section 26, on Chapter relating to Indictable Offences.

Summons.—Service.

The service of the summons may be made upon the person to whom it is directed by delivering the same to him personally, or by leaving it with some person for him, at his last, or most usual place of abode. If left at the dwelling-house it should be served on some adult person residing there and being an inmate of the family, and the service may be made by any person to whom the summons is delivered, and is not restricted to a constable or peace officer, (section 2).

The proof of service is by the person serving summons appearing at the time and place and deposing to same: (section 3). The Justice is authorized to take the oath of party.

The Justices are the judges as to whether the summons was served in a reasonable time before the hearing, but care should be taken that due time be given for the appearance of the party; the residence of party and other circumstances being considered. A summons was left at eight o'clock in the morning, at the house of a person who was a collier, with his wife, requiring him to attend at a petty sessions, to be held at eleven o'clock the next morning at a place eight miles off, to answer a charge of assault. He, not returning home from the colliery till eleven o'clock at night, did not receive the summons till that hour. Not being able in time to arrange for some one to supply his place at the colliery, or to collect his witnesses, to defend himself against the charge, he did not attend the petty sessions, and the Justices convicted him of the assault in his absence. *Held*, that the Justices were the judges of whether the summons was served in a reasonable time before the hearing, and that the fact (not known to them) that he did not receive the summons until eleven o'clock at night, did not deprive them of their jurisdiction to hear and adjudicate upon the complaint: William, *In re*, 2 L. M. & P. 580; 15 Jurist, 1060.

Although in such a case the jurisdiction of the Justices would not be destroyed, yet where the party has had no reasonable opportunity of appearing, a good ground might be afforded for setting aside the conviction, the party not having had sufficient opportunity to answer the charge. If, however, the matter was brought up on appeal under the provisions relating to same, where the court are to hear the charge or complaint upon the merits, it may be that the hearing would have to proceed as in case of a new trial, where the party might make his defence on the merits. See Post. Chapter 4.

Ex parte Order.

Where the Justice is authorized to make an order *Ex parte*, he need not issue a summons; section 4.

It is, however, proper to issue a summons, even where not required, in order that the party charged may attend, and shew cause. See *Rex.* v. *Martyr*, 13 East. 55.

Variances, Defects, etc.

The provisions in the Statute, in reference to objections not being available on account of defects or variances in information, complaint or summons, are similar to those in the Statute, relating to Indictable Offences, as also the power of Justice to issue warrant where summons disobeyed, or to issue warrant in first instance. See *ante*: (waiver of objections) under section 1, Indictable Offences.

Proceedings on Defendants Appearing or being Apprehended.

Apprehension of defendant under warrant—He may be committed to gaol or other prison, or safe custody. Informant to have due notice—Committal to be not longer than one week. See section 33.

Proceedings on defendant being apprehended. If informant does not appear—Proceedings by Justice. See section 34.

If defendant out on bail, and not appearing at the proper time—Proceedings thereon. See section 35.

Proceedings at hearing. See sections 36-37.

See *ante* remarks, under Chapter 3, s. 29, "Open Court,"

Justice may convict or make order if defendant admits the charge. See section 38.

If he does not admit the charge—Trial to proceed.

Witnesses—Examination of. See section 39, and remarks *ante*, under Chapter 3, section 29, "Open Court," and remarks *ante*, under Chapter on Indictable Offences; section 28.

Convictions.

Form of. See section 50.

Orders. See section 51.

See remarks *ante* under Chapter I, section 1, etc., and post under Appeal, Chapter V.

Certificate of case dismissed.

No further proceedings to be had. See section 43.

Section 78—Effect of conviction if no appeal therefrom, not to be set aside for defects in form, liberal construction to be given.

Section 89—Conviction of several persons of same offence, one amount only to be paid to party aggrieved.

Other sums, how applied.

If Conviction made, or Order—Minute of Conviction, etc., to be made.

Under section 42, the defendant if convicted is entitled to a minute or memorandum of conviction without paying therefor, so also in cases of an order made. This the defendant may require in order to consider his course as to an appeal. The conviction when drawn up in proper form has to be transmitted and filed in the proper Court before the time when an appeal from such conviction could be heard, and there to be kept by the proper officer among the records of the Court. See section 72; and by same section 72, a certificate of copy of conviction shall be sufficient evidence to prove a conviction for a former offence, and by section 65, when the conviction is quashed, the Clerk of the Peace or other proper officer shall endorse on the conviction or order, a memorandum that the same has been quashed; a certified copy of which, under the hand of the clerk or other proper officer shall be sufficient evidence that the conviction has been quashed.

The conviction when drawn up in proper form must be under the hand or hands of the Justice or Justices, and under his or their seals. Any impression purporting to be his or their seals will be sufficient as a seal, and an impression made in ink with a wooden block, in the usual place of a seal, and purporting to be the seal of the Justice signing was held sufficient: *Rex.* v. *The Inhabitants of St. Paul*, 7 Q. B., 232.

Acts relating to Summary Convictions, generally give a prescribed form of conviction or refer to forms in other

Acts to be used to like effect. Formerly it was necessary to set out the evidence upon a conviction on the face of it, that the Court might judge whether Justices had done right, and a conviction was bad unless it set forth the evidence both for and against the defendant. The conviction also was required to shew that the evidence was given in the presence of the party charged, and that the witnesses were sworn as well as examined in the defendant's presence. Although these matters may still be necessary to be shewn in the proceedings, in order that the Court on appeal may see that all was rightly done, yet it is not necessary that they should appear in the conviction itself.

The proceedings set them forth and the form of conviction applicable to the case, is given by the Act or Statute relating to Summary Convictions, and if followed, and the proceedings such as warrant the conviction, the same will be held good. Much of the law relating to convictions had under Provincial Statutes and the strictness required in form and substance of convictions, are not applicable to convictions under the Dominion Statute when the conviction is heard on appeal.

Return of Convictions.

Section 72—Justice convicting to return the conviction; and the deposit money if any, on appeal. Certificate of conviction or proof of copy to be sufficient evidence.

Sections 76, 77—Justice to make returns to Quarter Sessions or Court having jurisdiction of all convictions.—Joint returns.—Form given.—Return of receipts of money and applications therefor, and to be filed by Clerk of Peace or other proper officer of Court. See 33 Vic. cap. 27, s. 3; 40 Vic. cap. 27, s. 3.

Penalty on Justices neglecting to comply with the provisions of Act as to returns, or misconduct. See section 78-82.

Actions against—Limitation of time. See section 79.

CHAPTER III.

Hearing of complaint or information—By and before whom. Issuing of warrants and commitments—By whom may be done.

Place of hearing, etc., to be an open Court. See section 29.

Appearance and defence by Counsel. See sections 30, 31.

Right to address Court. See section 40.

Negativing or disproving exceptions in information. See section 44.

Proceeding *ex parte* on non-appearance of party after service of summons; or warrant may issue to bring party. See sections 7, 32.

Adjournment of hearing of case, or proceeding in absence of parties. See sections 46, 47.

Dismissal of case on non-appearance of prosecutor. See section 48.

Defendant failing to appear—Recognizance forfeited—Proceedings thereon. See section 49.

Before what Justices.

Sections 27, 28, provide that every complaint and information shall be heard, determined and adjudged by one Justice, or two or more Justices of the Peace as may be directed by the Act or Law upon which the complaint or information is framed, or by any other Act or Law in that behalf; and if there be no such direction in any Act or Law, then by one Justice for the Territorial Division where the matter of the complaint or information arose.

By section 85, it is provided that in all cases of summary proceedings before a Justice or Justices out of ses-

sions upon any information or complaint, one Justice may receive the information or complaint and grant a summons or warrant thereon, and issue his summons or warrant to compel the attendance of witnesses for either party and do all other acts necessary preliminary thereto to the hearing, even in cases where by the Statute in that behalf the information or complaint must be heard and determined by two or more Justices.

This latter section does not allow the *receiving* of information or complaint, where by express enactment such must be received by more than one Justice, and does not repeal provisions of former Statutes expressly requiring more than one Justice to receive an information: *Reg.* v. *Griffin*, 9 Q. B. 155; *Reg.* v. *Russell*, 13 Q. B. 237.

By section 86, after a cause has been heard and determined, one Justice may issue all warrants of distress and commitments thereon; and by section 87, it is provided that it shall not be necessary that the Justice who acts before or after the hearing, be the Justice or one of the Justices by whom the case is or was heard and determined; and by section 88, it is provided, that in all cases where by any Act or Law it is required that an information or complaint shall be heard and determined by two or more Justices, or that a conviction or order shall be made by two or more Justices, such Justices must be present and acting together during the whole of the hearing and determination of the case.

The Judicial Act would not be complete without the continued concurrence of the same Justices, who are considered as the undivided Court to hear and determine, and if they cannot come to a determination, they cannot call in a third Justice to assist in their determination, after the case has been heard before the two Justices only and make him a party to the conviction.

An Act empowering one Justice to hear the case, does not prevent the case from being heard by two Justices: see 2 Salk. 477. See Interpretation Act, 31 Vic. cap. 1, "Twenty-fifthly."

By section 91 of Act, any Judge of Sessions of the Peace, Recorder, Police Magistrate, District Magistrate, or Stipendiary Magistrate for any District, etc., shall have full power to do alone whatever is authorized to be done by two or more Justices of the Peace. A similar provision is made in Act 32-33 Vic. cap. 30, s. 59, relating to Indictable Offences.

Right of Party to Know Informer.

In general a defendant has a right before going into his proof to know who his informer is, and who has set the law in force against him.

In cases under the Revenue Laws, protection is given to informers; but the private information given to a revenue officer upon which he afterwards acts upon his own responsibility is very different from a complaint made to a Justice of the Peace, upon which a legal proceeding is founded: *Ex parte* Stevenson, 3 All., 290, N. B'k.

The name of the informer or complainant must appear on the face of the conviction: *Re* Hennesey, 8 U. C. L. J. 299.

Open Court.

Section 29—Proceedings under the Summary Conviction Act being judicial ones, all the Queen's subjects for whom there is room and against whom there rests no special ground for exclusion have a right to be present.

It is otherwise in cases of Indictable Offences on preliminary examination. See *ante*, under Indictable Offences, section 35.

Power to preserve order. See section 92.

Power to punish resistance to Process, etc. See section 93.

The Justice or Justices having the party accused before him or them, proceeds with the hearing of the case—(as to personal appearance of party see *ante*) which case is described in the information or complaint. The Justice

before he has either issued his summons or warrant in the matter, will have well considered his jurisdiction to do so, that jurisdiction will be considered as to place where the alleged offence is said to have been committed, as being within the territory c county where the Justice can exercise his jurisdiction, he or they will have considered whether they have jurisdiction over the subject-matter of the offence; whether the particular Statute against which the offence as alleged contains exceptions or exemptions, or requires particular Justice or Justices to deal with the offence; whether the charge or complaint is laid within time allowed by Statute; and what number of Justices must deal with and determine the matter.

If the Justice is satisfied that he has full jurisdiction, he proceeds with the case, and in first instance states to the defendant the substance of the information or complaint and he shall be asked if he has any cause to shew why he should not be convicted, or why an order should not be made against him as the case may be.

If the defendant admits the charge and shews no cause against being convicted, or why an order should not be made against him, the Justice or Justices present at the hearing, convict or make an order accordingly. In making such conviction or order, care must be exercised that the amount of penalty or forfeiture or degree of punishment is not in excess of what the Act against which the offence is laid, prescribes and allows, and that costs are not included, which are not warranted by the Act. If truth of the information or complaint as charged is denied, the Justice or Justices proceed to hear the prosecutor or complainant and witnesses, all of whom are to be examined under oath; and the defendant is to be heard, who may comment on the evidence on the part of informant or complainant, and endeavour to shew that no case has been established, and if successful in this, the case will be dismissed without calling on the witnesses for the defendant, but if the Justice considers that a *prima facie* case has been made out, then the defendant by himself or his Counsel will call his witnesses,

but the defendant cannot be examined himself as a witness on his own behalf as the prosecutor or complainant can, the words of the 39th section as to hearing the defendant, not conferring the right to be examined as a witness unless he has that right by virtue of the particular Statute, against which the offence is laid; in cases of common assault, the defendant may be examined as a witness, on his own behalf, but this is by virtue of express Statute, 41 Vic. cap. 18.

The informant or complainant may adduce evidence in answer or in reply to that of the defendant's witnesses, but the rule of evidence should be observed before such evidence is admissable, that where the informant or complainant has gone into the evidence on his case and should have exhausted his witness on the matter about which he testifies, he should not be allowed to supplement that evidence, because it has been controverted by the defendant's witnesses. The evidence admissable in reply, ought to be as to such statements or evidence of defendant's witnesses as were in no way connected with the informant's case which he should have made out in the establishing of his case, and should be restricted to matters not already deposed to by the complainant's witnesses, and which did not necessarily form part of his case to be made out.

A discretion however, may be exercised by the Justice as to receiving evidence which ought to have been given before, but no undue advantage should be afforded the complainant over the defendant, by the reception of evidence of an improper nature, or at an improper period of the trial.

Right of Party to Address Court.

The right of either party to address the Court exists only at the opening of their respective cases, (see section 40); bu not unfrequently the Justice allows Counsel to sum up and address the Court, but this must be considered a favor dependant on the consent of both parties.

Dismissal of Case.

If no case has been made out, or if the alleged offence has been answered, to shew that the party is not liable to conviction, or that no order should be made on the complaint, the parties considering the whole matter shall either dismiss the case or convict. See section 41.

In cases of trifling assaults, discretion is given to the Justice to dismiss the complaint as one not deserving any punishment, even where there has been evidence of an assault: see Act 32-33 Vic. cap. 20, s. 44; or where the assault has been a justifiable one.

Negativing or Disproving Exceptions, in Information.

By section 44, it is incumbent on the defendant to prove the affirmative in his defence, if he wishes to have advantage of the exception, where information or complaint negatives any exemption, exception, proviso or condition in the Statute, on which the information or complaint is founded.

The information should shew that an offence has been committed, and if, under certain conditions or provisos the act or omission, as the case may be, would not be an offence it should be alleged that the defendant does not come under the excepting condition, etc. If however, the information is laid without negativing such exception, etc., the complainant would have to prove on his side the offence, and that the party was not excused or exempted by virtue of the exception, condition, or proviso, etc. Where an act is made punishable by Statute on Summary Conviction, which act may be lawful if performed under certain circumstances, those circumstances ought to be negatived in the conviction.

When the proof must negative such circumstances, the allegation in the conviction ought to do the same, and in such cases a statement of the offence in the terms of the Act creating it, is not sufficient: *Fletcher* v. *Calthrop*, 1 New Sess. Cas. 529, 6 Q. B. 880.

Proceeding Ex Parte—Non-appearance of Party.

Sections 7-32 make provision that, in case, the defendant does not appear according to the summons, that on due proof of service of same, the Justice may proceed *ex parte* and adjudicate in the matter of complaint in same manner as if party before him; and by section 32, the Justice is empowered instead of so doing to issue his warrant and adjourn the hearing of case until defendant is apprehended.

Adjournment—Dismissal of Case.

The Justice is empowered by section 46 to adjourn the hearing of any case; and if defendant or prosecutor does not appear at adjourned time and place, or by Counsel or Attorney, (section 47), the Justice may then proceed to the hearing or further hearing of the case, as if the party or parties were present.

And by section 48, if the prosecutor or complainant does not appear, the Justice may dismiss the information or complaint with or without costs.

In cases of a trivial nature, or where on part hearing the evidence, it is of an unsatisfactory nature, and the prosecutor fails to appear to further prosecute, the Justice should dismiss the case; and by section 48, it would appear that the complaint or information should be dismissed as a matter of legal proceeding on failure of appearance of prosecutor in first instance of hearing, and such dismissal to be with or without costs in Justice's discretion.

Section 49, makes provision for proceedings, on forfeited recognizances, if defendant fails to appear.

Disqualifying Interest in Justice.

Though any pecuniary interest, however small, on the subject matter disqualifies a Justice from acting in a judicial inquiry, the mere possibility of bias in favor of one of the parties does not, *ipso facto* avoid the Justice's decision, in order to have that effect, the bias must be shewn at

least to be real; wherever there is a real likelihood that the Judge would, from kindred or any other cause, have a bias in favour of one of the parties, it would be very wrong in him to act. *Reg.* v. *Rand.*, 1 L. R., Q. B. 229.

In same case the Court says, "we think that *Reg.* v. *Dean of Rochester*, 17 Q. B. 1, is an authority that circumstances from which a suspicion of favour may arise, do not produce the same effect as a pecuniary interest."

If a Justice has a real interest as might give him a bias in the matter, he ought not to sit as a Justice with others, and it is immaterial what part he really took in the matter. *Reg.* v. *Meyer*, 1 L. R., Q. B. D. 173.

On shewing cause in this case, M. (the Justice) made affidavit that, though he sat on the bench, he took no part until the other Justices had unanimously determined to convict, when he (M.) proposed a mitigation of the penalties, and that he did not sign the convictions, and the court made a rule absolute for *certiorari* against M.

The interest which, at common law disqualifies an officer from acting in a judicial inquiry, must be direct and certain, and not merely remote or contingent. *Reg.* v. *Manchester, etc., Railway Company*; 2 L. R., Q. B. 336.

When a Justice is expressly empowered by Statute to hear and determine, although interested in the result, he is then not disqualified in acting.

In *Reg.* v. *Simmons*, 1 Pug., 158, N. B'k. It was decided that, if the Justice is interested in the prosecution, as where he was a member of the Division of Sons of Temperance, by which a prosecution for selling liquor was carried on, he is incompetent to try the cause, and a conviction before him is bad.

Next or Nearest Justice.

This expression necessarily means the next or nearest disinterested Justice having jurisdiction.

Where on a hearing of a complaint, an objection to a Justice on the ground of interest is waived by the parties, the Justice has jurisdiction, and the want of jurisdiction

on that ground cannot afterwards be raised. *Wakefield Board* v. *West Riding, etc., Railway Company*, 1 L. R., Q. B. 84.

Jurisdiction—Ouster of—Assault—Summary Conviction on —Title to Land in Question.

On a hearing of a complaint for an assault under the provisions of 32-33 Vic., c. 20, s. 43, if it be shewn that a *bona fide* question as to title to lands is involved, the jurisdiction of the Justices is at once ousted (see s. 46 of latter Act), and the Justices cannot proceed to enquire into and determine by Summary Conviction, any excess of force alleged to have been used in the assertion of title. *Reg.* v. *Pearson*, 5 L. R., Q. B. 237.

The claim of title must be *bona fide*, and not one that is absurd and impossible in point of law, and the question is whether a reasonable claim of right is involved, honestly asserted. See *Watkins* v. *Major*, 10 L. R., C. P., 662.

Discretion in Issuing Summons on Information—Refusal.

Upon an application to Justices against certain persons to answer a charge of conspiracy to break the peace and do grievous bodily harm at a public meeting, evidence was given that a disturbance had arisen at the meeting, in which the defendants took part, and that one or other of them had previously offered money to different persons, if they would commit acts of violence at the meeting. The Justices, after hearing the evidence, declined to issue the summonses, and a rule *nisi* for a *mandamus* having been obtained, they stated in their affidavit that upon the facts brought before them, they did not feel justified in granting the application, but did not say that they thought the witnesses unworthy of credit: *Held*, that the rule must be made absolute, for, although under 11-12 Vic., c. 42, s. 9, the Justices are to issue their summons, "if they shall think fit," it was here evident that they had not exercised a discretion. *Reg.* v. *Adamson*, 1 L. R., Q. B. D. 201.

Mandamus.

If the Justice or Justices refuse to enforce the powers conferred upon them, and the execution of those Acts which is required to be done by them, the Court will issue a *mandamus* or grant a rule against them to compel the performance of their duties, but no *mandamus* will issue to compel the Justice or Justices to give the reasons for their judgments, or make special entries thereof on their records: *Rex.* v. *Devon, Justices*; 1, Chit. 34. The Court will however, issue a *mandamus* to hear an appeal, if the Sessions have refused to hear report on erroneous decision as to the sufficiency of the notice of appeal or matters preliminary to the hearing, involving matters of law and not of fact only: *Reg.* v. *Kesteven ,Justices*; 3, Q. B., 810, 11 Jurist, 185.

CHAPTER IV.

Service of Minute of Order.

Defendant to be served with a copy of the minute of order before distress or commitment. See section 52.

This section refers only to orders and not to convictions. A party duly convicted of an offence is bound to take notice of the terms of the conviction at his peril: *Reg.* v. *O'Leary*, 3 Pug. 244, N. B'k.

Costs.

By section 53, power is given to the Justice to award costs against the defendant in all cases of convictions or orders, such costs to be reasonable in that behalf and in accordance with the fees established by law on proceedings had by and before Justices of the Peace.

By section 54, costs may in like manner be awarded to the defendant when the case is dismissed, and by section 55, such costs are to be specified in the conviction or order, or order of dismissal, and recoverable in the same manner, and under the same warrant as any penalty adjudged to be paid by the conviction or order is to be recovered, and by section 56, costs may be recovered by distress and sale of the goods and chattels of the party, and in default of distress, by imprisonment with or without hard labour for any time not exceeding one month, unless the costs are sooner paid.

The amount of costs must be specified in the conviction or order: *Ex parte*, Hartt, 3 All. 122, N. B'k..

Statutes relating to costs are and ought to be construed strictly and according to the letter: 3 Burr. 1286; *Rex.* v. *Inhabitants of Glastonby*, Ridg. Temp. Hard. 355.

On appeal the conviction may be amended as to costs.

If costs are awarded by virtue of the Act and the Act does not authorize the adjudging of costs of commitment and conveying to gaol, the conviction will be bad, as being in excess of jurisdiction, and on *certiorari* will be set aside. *Reg.* v. *Harshman*, 1 Pug. 317, N. B'k.

Costs on Appeal—Recovery. See sections 69-74.

Enforcement of payment of same. See section 75.

Warrant of Distress.

Warrant of distress where pecuniary penalty or compensation ordered. See section 57.

Backing of warrant for execution in other County. See section 58.

And remarks on backing warrants under chapter relating to Indictable Offences. Section 23.

When the issuing of a warrant would be ruinous to defendant, or there are no goods, Justice may commit. See section 59.

When distress is issued, defendant may be bailed or detained until it is returned. See section 60.

If defendant does not afterwards appear, the recognizance to be certified and transmitted to the proper officer. See section 61.

In default of sufficient distress, Justice may commit defendant to prison—Proviso as to term of imprisonment. See sections 62-64.

[illegible]r of payment of amount of distress.—Constable to [illegible] execute warrant. See section 83.

[illegible] of penalty and costs to keeper of gaol—Party to be discharged. See section 84.

A commitment of the person ought not to take place, where provision is made, that the sum to be levied is first to be by distress on the goods and chattels.

Cumulative Sentence.

Section 63 provides that, where a defendant is adjudged to be imprisoned and the defendant is then in prison undergoing imprisonment upon conviction for any other offence, the warrant of commitment for the subsequent offence shall be forthwith delivered to the gaoler, or other officer to whom it is directed, and the Justice or Justices who issued the same, if he or they think fit, may order and award therein, that the imprisonment for the subsequent offence shall commence at the expiration of the imprisonment to which the defendant was previously sentenced. This section is similar to section 25 of 11-12 Vic. c. 43, English Statute, and under that Statute the Court of Queen's Bench have decided that, where the defendant is summarily convicted at one time of several distinct offences, the Justices have power to award that the imprisonment under one or more of the convictions shall commence at the expiration of the sentences previously pronounced. *Reg.* v. *Cutbush et al.*, 2 L. R., Q. B., 379.

The Court in this case, held that the man may be said to be imprisoned from the moment he is convicted of the first offence and sentenced to imprisonment under it, and that the Justices, in making the second sentence commence at at the expiration of the first, acted within their jurisdiction.

Clerk of the Peace—Duties of.

Section 80. Clerk of the Peace or other proper officer to publish and post up returns made by Justices.

Section 81. Copy of Returns to be sent to Minister of Finance.

See section 3 of Act, 33 Vic. cap. 27 (1870), altering above sections which is inserted after section 77 of Act 1869.

Any duty imposed on any officer by the term "Clerk of the Peace," the said term shall include the proper officer of the Court having jurisdiction on appeal under the said Act (32-33 Vic. cap. 31) and the Acts amending the same: 40 Vic. cap. 27, 1877.

CHAPTER V.

APPEAL.

Notice of Appeal—Conditions.

The section 65 of Act, 32-33 Vic., c. 31, (1869), has been repealed and a substituted section, 33 Vic., c. 27, (1870) given, which has also been in part repealed by, 40 Vic., c. 27, (1877), and reads as in section 65 of Act, which see a form of notice of appeal is also given by Act, 35 Vic., c. 27. See forms.

The grounds of appeal are not required to be stated.

Witnesses and evidence other than called or adduced at original hearing may be allowed.

The section 66 of Act 1869, has been amended as to evidence in appeals under the said Act, and reads as in section 66. See also sections 67, 68.

Appeal.

The Act, 40 Vic., c. 27, which repeals the substituted section contained in Act, 33 Vic., c. 27, gives the right of appeal to certain Courts therein specified, unless otherwise provided in any special Act, under which a conviction takes place, or an order is made by a Justice or Justices of the Peace, or unless some other Court of Appeal having jurisdiction in the premises, as provided by an Act of the Legislature of the Province, within which such conviction takes place or order is made, and give a right of Appeal in all cases where no such provisions are made, to the Courts specified in section. By this provision it would seem to be the intention to allow appeals in all cases, whether the proceedings

have been under this Summary Conviction Act, or any other special Act, where provision for appeal has not been made, subject nevertheless to the conditions and provisœs contained in said Summary Conviction Act.

If any other Court of Appeal having jurisdiction in the premises, is provided by an Act of the Legislature of the Province within which such conviction takes place or order is made, then the appeal shall be to such Court—otherwise the appeal shall be made to the Court as named in the section 27, 40 Vic., c. 27.

Appeals in Province of Ontario.

See Revised Statutes of Ontario, Chapter 74, "An Act respecting Summary Convictions before Justices of the Peace," and Chapter 75, "An Act respecting the procedure on appeals to the Judge of the County Court from Summary Convictions.

Province of Prince Edward Island.

Any appeal to the General or Quarter Sessions of the Peace, from any conviction by, or order of a Justice of the Peace, given by the Act passed in the session held in the thirty-second and thirty-third years of Her Majesty's reign, and entitled "An Act respecting the duties of Justices of the Peace out of sessions in relation to Summary Convictions and Orders," or by the Act amending it, passed in the thirty-third year of Her Majesty's reign, and entitled, "An Act to amend the Act respecting the duties of Justices of the Peace out of sessions in relation to Summary Convictions and Orders," shall, in the said Province, be to the Supreme Court at the sitting thereof held next after the expiration of twelve days from the time when such conviction was had, or such order was made; the proceedings prior to the appeal being governed by the Act hereby extended to the said Province and first mentioned in this section: 40 Vic. c. 4, s. 6.

It will be observed that the present Dominion of Canada Statute has made provisions in regard to appeals from convictions confining such to the merits of the case. By section 68, it is provided that in all cases of appeal from any

Summary Conviction or Order, had or made before any Justice or Justices of the Peace, the Court to which such appeal is made, shall hear and determine the charge or complaint on which such conviction or order has been had or made, upon the merits, notwithstanding any defect of form or otherwise in such conviction or order, and if the person charged or complained against is found guilty, the conviction or order shall be affirmed, and the Court shall amend the same if necessary, and any conviction or order so affirmed, or affirmed and amended, shall be enforced in the same manner as convictions or orders affirmed on appeal. And by Act, 33 Vic. p. 27, sec. 3, sub-sec. 3, it is further provided, that the Court to which such appeal is made, shall thereupon hear and determine the matter of appeal and make such order thereon with or without costs to either party, including costs of the Court below, as to the Court seems meet, and in case of the dismissal of the appeal or the affirmance of the conviction or order, shall order and adjudge the offender to be punished according to the conviction, or the defendants to pay the amount adjudged by the said orders and to pay such costs as may be awarded, etc. By these sections it is made a question of fact whether the party is guilty of the offence charged, and if the evidence warrants such conviction, that the conviction shall not be quashed, notwithstanding that in the conviction there may be defects of form or otherwise; and if there is anything in the conviction unauthorized by Statute, that the conviction or order may be amended by the Court on appeal, and enforced as amended and be as if no such defects or errors had ever been in the same.

The Statute in the clauses in reference to appeals is somewhat perplexing, and the arguments on different views of the sections of Act may best be illustrated, by citing two judgments delivered on same, one, by one of the County Court Judges, New Brunswick, and the other by the Supreme Court, N. B., on a case submitted for opinion of the Judges.

In the former judgment of County Court, the Queen on

the complaint of *Leonard R. Harding* v. *William Harper*, Carlton County Court, 1875, the Judge says: "The above matter comes before the court on appeal, under the provisions of the Statute of the Dominion of Canada, 32 and 33 Vic., c. 31, and 33 Vic., c. 27, the appeal is founded on a conviction made by the above named Justice, against the above named *Harper* for an assault and battery on one *Leonard R. Harding*, the complainant; and the jurisdiction of the Justices is derived from the Dominion Statute, 32-33 Vic., c. 20, s. 43, which provides that, where any person unlawfully assaults or beats any person, any Justice of the Peace, upon complaint by or an behalf of the party aggrieved—praying him to proceed summarily on the complaint—may hear and determine such offence. The conviction in said case does not on its face set out the prayer to proceed summarily,—the information or complaint however contains the prayer of the prosecutor or complainant to proceed summarily to try the charge. The appellant contends that the conviction should contain the prayer aforesaid, in order that jurisdiction should appear on the face of the conviction, and that it is not sufficient that the information contains the prayer. He further objects to the conviction as being in excess of jurisdiction and bad, inasmuch as the conviction contains the awarding of costs of conveying the party to gaol, and that thereby, the defendant is convicted in a larger penalty than the Statute allows.

"As to the necessity of jurisdiction appearing on the face of the conviction, this (if necessary) may, I consider, be inserted in the conviction on amendment of same, inasmuch as the jurisdiction of the Justices is founded on the information—the Justices had jurisdiction to try the complaint by prayer being made in the information or complaint—that jurisdiction continued up to the time of making the decision or adjudication, and the not inserting it in the conviction was, (if necessary to insert it) a defect which, I think, is clearly amendable, and which the Court would be required by the Statute to amend.

"As to the other ground of objection, which is, under the decision of the Supreme Court, see *Regina* v. *Harshman*, 1 Pug., 317—a substantial one, and which is patent to the conviction, I must hold it fatal to the conviction, and such a substantial defect, which I do not consider by the language of the Statute, is one which the court can amend. No doubt but that section 68 of Statute, 32-33 Vic., c. 31, requires that the merits shall be heard and determined, notwithstanding any defect of form or otherwise in the conviction or order, but I do not consider that is clearly intended to embrace defects for substance.

"The section 67 of said Statute expressly refers to defects in substance or in form in reference to information, complaint or summons, or any variance between such, and the evidence adduced thereon at the hearing as not being available, unless the same was objected to before the Justice, and he refused to adjourn the case, and the party prejudiced thereby; reading the two sections together, I consider that, where the conviction is defective in such matters of form or otherwise as are not allowed to stand in the way of hearing before the Court as to the merits, the Court may amend the conviction as to any such defects if necessary; such amendment would not be inconsistent with the Court on affirming the conviction or ordering under the provisions of the s. 1, sub-sec. 3 of 33 Vic., c. 27, (Statute, 1870), that the offender be punished according to the conviction, or that he pay the amount adjudged by the said orders; or, with the Court of Appeal—if it thought necessary—issuing process for enforcing the judgment of the Court below; but how can this be done, should the Court of Appeal amend or alter the judgment? that is, the adjudication of the Court below, and which, I consider, is a matter peculiarly within the Province of the Justice himself to determine.

"Suppose, for example, that the Justice should wrongfully adjudicate, that for the assault in the present case, where the punishment is limited to two months' imprisonment, the party should be ordered to be imprisoned for three months, and that the Court on appeal, should proceed with

the hearing, and be of opinion that the party should be convicted, the Court could not, in such case, under section 1 of Act of 1870, adjudge the offender to be punished according to the conviction—which that section expressly directs shall be done—then what other punishment should the Court on appeal award, should it be one day or two months—this would be taking the matter out of the discretion of the Justice, and would be a new adjudication, which the Statute does not expressly authorize; so likewise, if the Justice had imposed a fine of $40, where the Statute limits it to $20. The Act of 1869, sec. 66, says, 'that the Court on the finding of the jury shall give such judgment as the law requires.' Such was the provision likewise of the law of appeal under the Ontario Statute, c. 114, Consolidated Statutes, and if the power was not governed by the express direction of the Dominion Statute of 1870, sec. 1, sub-sec. 3, a proper judgment might be pronounced after a hearing on the merits, but the Court on appeal is now limited to the adjudging the party to be punished according to the conviction; and the conviction in the present case, awarding in fact a greater penalty than the law allows, is the matter of which the appellant complains, and as to which he thinks himself aggrieved, and thereupon makes his appeal and is the matter of appeal which the Court has to determine, and however the merits may be as to the facts of the case, I could not adjudge the party to be punished according to the conviction as in the before recited sub-sec. 3 of 33 Vic., c. 27, is directed to be done, and therefore, must refuse to hear the charge or complaint on which the conviction or order has been made, as before a jury, which, if so heard and found against the appellant, would require me to adjudge the offender to be punished according to the conviction which is in excess of what the law allows, and therefore should not be enforced.

"The section 71 of Act, 32-33 Vic. cap. 31 (1869), provided generally that no *certiorari* should lie for defects of form, but that section is repealed and a substituted section given in

Act of 1870, which restrains the issuing of a *certiorari* where the objections are to matters of form, and where the conviction or order has been affirmed, or amended and affirmed, leaving the conviction, I conceive, still assailable as to matters of substance, and comparing the above substituted section with the 73rd section of Act of 1869, the conviction shall not be set aside, vacated or annulled in consequence of any defect of form whatever, where the merits have been tried, the party having appeared and pleaded, or where the defendant having opportunity has not appealed, or when having appealed the conviction has affirmed, would seem to permit the conviction as such, to be still assailable for defects in substance potent to the conviction, although the conviction as such shall not be vacated for defects of form, where the charge or complaint on which such conviction has been made, has been heard or determined on the merits, or been confirmed on appeal, or where the party having opportunity has not appealed. It would seem therefore to be within the peculiar duty and province of the Court of Appeal to deal with and determine the defects in substance in the conviction itself, before hearing the charge or complaint on which such conviction is founded."

In opposition to the judgment above delivered, the Judges of the Supreme Court of New Brunswick have delivered an opinion on a case submitted to them by one of the Judges of the County Courts, and which is certainly more in accordance with the seeming intention and spirit of the Statute, than that expressed in the foregoing judgment.

The case was one of Summary Conviction for an assault before a Justice of the Peace, under Stat. 32-33 Vic. cap. 20, s. 43 Canada Acts, and is as follows:—"The conviction adjudged defendant to pay a fine and costs amounting to $20, and in default of payment to be imprisoned for seven days unless the said sum *and the costs and the charges of conveying defendant to gaol be sooner paid.* This part of it is not authorized by the Act; defendant has appealed from the conviction under 32-33 Vic. cap. 30, s. 65,

amended by 32 Vic. cap. 27, which substitutes a new section which directs, that the Appellate Court shall hear and determine the merits of appeal and make such order therein as seems meet, and in case of the dismissal of the appeal or the affirmance of the conviction shall adjudge the offender to be punished *according to the conviction.* The 68th section of 32-33 Vic. cap. 30, authorizes the Court of Appeal to hear and determine the matter upon the merits, notwithstanding any defect of form or otherwise in such conviction or order,—"and if the person charged is found guilty the conviction shall be affirmed, and the Court shall amend the same if necessary, and any conviction so affirmed, or affirmed and amended, shall be enforced in the same manner as convictions or orders affirmed on appeal.

"Judge Steadman wishes the opinion of the Judges whether on appeal he has the power to amend the conviction by striking out that part of it which relates to the cost of conveying the defendant to gaol.

"An appeal differs from a removal of a conviction on *certiorari* in this respect, that an appeal is a new trial on the merits, 2 Chit., G.P. 215, and by the express terms of the 66th section of the Act, 32-33 Vic., c. 31, the Judge is made Judge of the fact, as the law in respect of the conviction and by section 68 is to determine the matter on the merits, notwithstanding defects of form or *otherwise.* If on the hearing of an appeal, the Judge finds the defendant guilty of the charge, is he not authorized or perhaps bound to affirm the conviction, (the Act says that in such case the conviction shall be affirmed), and to make such necessary amendment as may be requisite to make it comply with the provisions of the Act? In fact, is he not put in the place of the Justice who originally tried the case? He can amend the conviction if necessary. It is necessary to amend the conviction here because the Justice has added something with respect to costs not authorized by the Act. The objection is not one strictly to the conviction, in (which is the fine); but to the terms of imprisonment fixed, if the defendant refuses to pay the fine. Judge Walters thinks

that under the words of the amended Act, section 65, 'And shall adjudge the offender to be punished according to the conviction'—he cannot amend the conviction, but must either absolutely affirm or reverse, as he has no power to apportion the imprisonment and cannot tell how much of it was applicable to the costs of conveying the defendant to prison. If that view is taken it would seem to neutralize the power of amendment given by section 68, the object of which seems to be to prevent a guilty party from escaping punishment in consequence of a mistake by the Justice.

"All the Judges think that under the 68th section of Act, the Judge on appeal has power to amend the conviction and strike out that part which relates to the costs of conveying the party to gaol—that the amended section 65 shall be read in connection with section 68, and that the conviction as amended by the Court of Appeal should be enforced." *Reg.* v. *Harding.*—J. C. Allen, C. J., October 16, 1878.

In the view of this opinion, the Court on appeal try the cause of complaint, and if party guilty in fact and law, makes a conviction in accordance therewith, irrespective of the conviction of the Justice should the same be bad, and the conviction to be considered as one of fact, or fact and law combined as to the liability of party to be convicted and this is what is to be affirmed. And it would follow that the Court of Appeal when necessary would have to impose the penalty, following as near as can be the discretion of the Justice as to the nature or amount of same in conviction made by him.

Under the Canada Act, the forms of conviction, given in Schedule (I) 1, 2, 3, apply to all cases and convictions drawn up in such of the forms as are applicable to the particular case, are sufficient, except in cases where proceedings are had under any Law or Act creating the offence or regulating the prosecution for same where a particular form of conviction is given. (See section 50.)

So also in regard to orders. Section 51. (See schedule (K). 1, 2, 3.)

Where an Act of Parliament gives the form of conviction for any offence prohibited by the Act, that form must be followed, and a conviction drawn up in any other form is illegal, and the Justices and those acting under it are trespassers: *Dawson* v. *Gill*, 1 East. 64; *Goss* v. *Jackson*, 3 Esp. 198.

As on an appeal as provided for in the Canada Act, the whole case is to be gone into, evidence given to support the conviction, in order that it may be known whether or not the material facts alleged in such conviction and upon which the same may be founded, has to be gone into by the Court on appeal.

Cases can rarely arise under that Statute where there is sufficient evidence to support the conviction or order, in which the conviction can be set aside for defects in the information, or in the conviction itself.

On *certiorari* it would be otherwise, for such facts cannot be enquired into, and the conviction amended according to the facts as can be done on appeal. Thus, where the facts on *certiorari* cannot be enquired into, an information charging an offence in the alternative is bad, as charging the defendant with selling ale *or* beer without license: *Rex.* v. *Saddler*, 2 Chit. 519. So where a Statute directs that no person shall expose to sale metal buttons marked with the word gilt, (the same not being really gilt) knowing the same not to be gilt, under a certain penalty; a conviction charging that the defendants did the act unlawfully and fraudulently, contrary to the form of the Statute, is bad, without an express charge that they did it *knowingly*, and such defect is not aided by a proviso in the Statute that no conviction for any offence in the Act should be set aside for want of form, or through the mistake of any fact, circumstance or other matter, provided the material facts alleged were proved, for this in effect requires all material facts to be alleged, and knowledge is a material fact to constitute such an offence: *Rex.* v. *Jukes*, 8 T. R. 537.

In this case Lord Kenyon, J. C., draws the distinction between an appeal where the whole case can be gone into and the facts necessary to constitute the offence can be enquired into, (as may be done and is required to be done by the Canada Act), and a *certiorari* where the facts cannot be enquired into; so that it would appear that on an appeal which is in fact a new trial, the fact of knowledge might be shewn, and the defect in information cured by evidence, and the conviction sustained according to the evidence on the merits. The real question for decision on appeal is, whether the party is guilty of the offence against the Statute under which proceedings are instituted; there may be defects in the information, both in substance and form, and if the party is misled or prejudiced in his defence by such, he may take his objection and the Magistrate is empowered and required in such cases to adjourn the hearing, and he is constituted the Judge as to whether the person charged, is misled or deceived by the information. The appeal being from the conviction, it would seem to be the spirit and intention of the Act, that the hearing of the matter on appeal must be confined to the hearing of the charge or complaint, which is founded upon the particular Statute under which the Magistrate has jurisdiction, and against which the offence is charged; and although the information may be defective in the statement of the offence, yet, if no objection is taken and the party is not shewn to have been deceived or misled, the question on appeal is, has the offence against the Statute in the terms thereof, and as to which the defendant has knowledge, been proved? The case is heard anew, additional evidence may be adduced and other witnesses examined than were before the Court below, and a new trial in fact had, and the Court on appeal, a new judge in the case, when the real question is one on the merits which may be wholly of fact, or fact and law.

It may happen that facts are proved, which in the opinion of the Justice constitute an offence, but he may be

mistaken in the law or construction of particular Statute under which the offence is alleged; in such a case, the appeal would be on the merits, and objection equally available as on *certiorari*.

In *ex parte*, Shannohan Sup. Court, N. B., Hilary Term, 1880, a conviction was had under the Dominion Stat. 37 Vic. cap. 45, s. 96, for exporting raw hides which had not been inspected and stamped. The section enacts,—"that the inspection of raw hides shall be compulsory at every place where an inspector has been appointed, and every raw hide *sold or offered for sale or exported*, offered for export or laden in any vessel for the purpose of being exported and which has not first been inspected and stamped or marked as herein required, shall be forfeited, and the person so selling, offering for sale, or exporting the same shall incur a penalty of one dollar for every hide so sold," etc. The defendant resided in St. John, N. B., which was an inspectorial district, there was no proof of his having sold or offered hides for sale there, but that he had sent a quantity of hides to Fredericton, N. B., which he said he had sold there. The Justices held that this was "exporting" within the Act and imposed the penalty. The Court held, that the conviction was wrong, and that exporting meant sending out of the Province, and a *certiorari* was granted.

The matter of appeal in such a case had it come up on appeal under the Summary Conviction Act, would be one on the merits and involved the legal liability of defendant upon facts about which there was no dispute, but on the construction of a Statute, and being a question of law the Court of Appeal would decide on such as to the liability of defendant.

Certiorari.

The jurisdiction of the Supreme Court is very extensive in regard to *certiorari*;—affidavits may be used to shew want of jurisdiction in the Justice, when that fact does not appear in the Return, and the case of *Reg.* v. *Gillyard*, 12 Q. B. 527, is a strong authority to shew that the Queen's

Bench have jurisdiction to quash on conviction upon other grounds than want of jurisdiction in the Magistrates, as for example, on the ground of fraud, conspiracy and perjury, in obtaining it.

As to the objection available in cases of conviction by *certiorari*, we do not intend to enter into a minute discussion of such. The principles applicable to making the same available, may be gathered from the foregoing statements and illustrations.

The right of *certiorari* is not taken away by the Statute, except in cases where the conviction or order is affirmed, or affirmed and amended on appeal: see 33 Vic. cap. 27, s. 2, being substituted section for section 71 of Act, 1869; and it will have been seen that many convictions that are made good by the Court on appeal would be held bad and not amendable when removed by *certiorari*. The Justices should follow the forms given in Schedule to Act as closely as possible, and insert nothing in the conviction or order, not warranted by the Statute against which the offence is alleged, either in way of penalty, punishment, costs, or otherwise.

Warrants of Commitment.

Section 2, of 33 Vic. cap. 27, provides that no warrant or commitment shall be held void by reason of any defect therein, provided it be thereon alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.

The Justices have to draw up the warrant or commitment in accordance with the forms given, and where the Act authorizes the Justice to issue his warrant or commitment, and he follows the form in Act, it will be held good: see sec. 96, of Act.

In the case of, *In re* Allison, 104-567 Alderson, B., says: "Since the passing of the 11-12 Vic. cap. 43" (similar to the Dominion Statute) "all that Magistrates have to do in drawing up warrants and convictions is to follow the forms given;" or words to the like effect.

If the Justice had no jurisdiction whatever to make conviction, any warrant or commitment thereon will be void, and this may be enquired into at the trial of an action brought against the Justices or those acting under such warrant or commitment: *Crepps* v. *Durden et al.*, Cowp. 640.

If the conviction be bad on the face of it, no act done in pursuance of it can be justified, and every seizure of property or person under same, will form the subject matter of an action.

The judgments of all Courts are void in the absence of jurisdiction; the jurisdiction of Superior Courts will be presumed unless manifestly wanting, but no such intendment can be made in the case of inferior Courts, and their proceedings will be nullities unless they show jurisdiction over the cause and the parties.

Whenever the nature of the charge made before a Magistrate is such, that it will be within the limits of his authority, if true, his jurisdiction will attach, and the jurisdiction in such cases does not depend upon the truth or falsehood of the facts, or upon the sufficiency of the evidence to establish the *corpus delicti* of the charge brought under consideration: *Cave* v. *Mountain*, 1 M. & G. 257. The question of jurisdiction does not depend on the truth or falsehood of the charge, but on its nature.

A conviction by a Magistrate who has jurisdiction over the subject matter is conclusive evidence of the *facts* stated in it: *Brittain* v. *Kinnaird*, 1 B. & B. 482. And a conviction made by a Magistrate, having jurisdiction over the matter and person, and exercised within the proper place in which he has jurisdiction, cannot be controverted as to the facts found: *Basten* v. *Carew*, 3 B. & C. 649; *Fawcet* v. *Gowles*, 7 B. & C. 394; *Reg.* v. *Boulton*, 1 Ad. & Ell. N. S. 515. If the case has been decided on the merits and there has been no appeal as provided for in the Statute, the conviction will remain in force and cannot be controverted on a subsequent trial of trespass or otherwise. In such a

case the conviction would be a good and valid one to sustain the warrant or commitment, so far as the facts are concerned. See section 73; and even in cases of applications for *certiorari*, when a conviction or order of Justices is returned to the Court and the proceedings are regular in form and in practice, and the case one over which the Justices had jurisdiction, the Court will not hear affidavits impeaching their decision on the facts, nor if they return the evidence, will it review their judgment thereupon, and the test of jurisdiction, under this rule is, whether or not the Justices had power to enter upon the inquiry, not whether their conclusions in the course of it were true or false.

Though the conviction is conclusive upon matters of fact, and if the defendant means to rely on matter of fact, he should make his defence at the time, yet the rule is different as to matter of *law*, as if a conviction of two persons be joint, where for offences *ex necessitate rei* several, it will be void, and trespass may be brought if it is acted upon: *Morgan* v. *Brown*, 4 Ad. & Ell. 515; and so also in the case of a single conviction of one person for two distinct offences: *Newman* v. *Bendshye*, 10 Ad. & Ell. 11.

The section 2, Act 1870, requires that there be a good and valid conviction to sustain the warrant or commitment, and so far as the law is concerned as to validity of conviction, the same may be gone into to sustain or controvert the conviction in a subsequent trial for trespass, and to show that the conviction is one not authorized by statute or law and that it has been made without jurisdiction, or where it manifestly appears that the warrant of commitment is in excess of what the conviction warrants, as where costs are to be levied where the conviction does not award any; See *Leary* v. *Patrick*, 15 Ad. & Ell. N. S. 273.

Such would seem to be the import of the provisions as to there being a good and valid conviction to sustain the warrant or commitment, and it would be incumbent on the defendant in an action brought against him, to show that there was a good and valid conviction in law upon which the warrant or commitment was made.

Where the conviction is not manifestly bad on its face, and where the Justice has jurisdiction to make it, and where the warrant or commitment follows the conviction and is not an excess of it, no objection can be heard that would impeach it on the merits on the trial.

In the Province of Ontario and other Provinces there are Acts passed for the protection of Justices and other Officers from vexatious actions, but these Acts are in most part applicable only where the Justice has acted with jurisdiction, not where he has had no authority to act—or where having authority to act he has exercised his power maliciously and without probable cause.

Ample protection is given by the respective Statutes of of the several Provinces to Justices who act with jurisdiction, but who may err in the exercise of same, and the provisions of such Statutes must be well examined before any action is brought against Justices of the Peace in relation to their doings.

An appeal to the quarter sessions does not preclude an action. *Leader* v. *Moxon* 2 W. Bl. 924.

Nor is a party appealing to the sessions thereby concluded from afterwards disputing its jurisdiction in the particular case. *Lowther* v. *Radnor*, 8 East 113.

As the person aggrieved is required to give to the prosecutor or complainant or to the convicting Justice for him, a notice in writing of such appeal from the conviction or order, within four days after the conviction or order, the Justice should insert all the particulars in the minute of conviction given, as the penalty, the amount thereof and such like as these matters complained of.

In cases other than those in which proceedings are to be governed by the Summary Conviction Act, the same urgency and particularity may not be requisite, and the formal conviction may be drawn up at any time before a return of the *certiorari*, although it could not be drawn up in form after the conviction has in any way been acted upon. The minute of the Justice's conviction must be taken

as the conviction for the purposes of appeal under the Act. See remarks of Blackburn, J., in *Ex parte* Johnston, 3 B. & S. 947.

As the person aggrieved must give to the prosecutor or complainant, or to the convicting Justice or one of the convicting Justices, for him, a notice in writing of such appeal within four days after such conviction or order; the notice must be within four days, thus, if the last of the four days should happen to be Sunday, a notice on the Monday following would be too late: *Reg.* v. *Middlesex Justices*, 7 Jurist 396.

A notice of appeal was according to the regular and ordinary course of post delivered on a Sunday, and if delivered on Monday there would not have been fourteen days before the first day of the sessions. *Held*, that the notice of appeal was void—fourteen days notice being required: *Asprell* v. *Lancashire Justices*, 16 Jurist, 1067

How and by whom given—Service of

The notice is to be given by the party aggrieved, and must be in accordance with the form prescribed by the Act and should state the intention not only to enter but to prosecute, also the appeal.

A personal signature would seem to be requisite to the validity of notice and to be the intention of the Act. In the case of the *Queen* v. *the Justice of Kent* 8 L. R., Q. B. 305, a notice of appeal signed in the appellant's name by the clerk to his Attorney with the appellant's authority, was held sufficient, but by the provisions of the Statute under which it was given, the notice of appeal was authorized to be "signed by the person or persons giving the same, or by his, her, or their Attorney on his, her, or their behalf." The notice in form is "Take notice I the *undersigned*" and seems to contemplate an individual notice signed by each party aggrieved. However by the memorandum to the form of notice—it is said "If this notice be given by several defendants or by an Attorney, it can easily be adopted"—

seemingly contemplating that the notice may be by Attorney. And that several defendants may join in the one notice. The service of such notice is well served on the Justice if delivered at his dwelling house, though he be not in personally. *Reg.* v. *N. Riding of Yorkshire*, Justices 7 Q. B. 154.

Besides the necessity of giving the notice required, the person appealing if he does not remain in custody must enter into recognizance, or in cases of orders to pay money, must make the necessary deposit as directed by sub-section 3. 33 Vic., c. 27.

The consideration of a notice of appeal is merely preliminary to a hearing of the appeal, and if the Court on appeal should decide that the notice is bad, upon objection being taken to it and dismiss the appeal, the Court will, if the decision is erroneous, award a *mandamus* to enter continuances and hear. *Reg.* v. *Surrey*, Justices 3 D & L. 573.

Time for Appeal.

If the conviction or order be made more than twelve days before the sittings of the Court to which the appeal is given, such appeal shall be made to the then next sittings of such Court, but if made within twelve days of the sittings of such Court, then to the second sittings next after such conviction or order. See 33 Vic., c. 27 sub-sec 1.

The Court on appeal must see that the necessary directions as to appeal have been followed, for it is upon fulfilment of the conditions that the appeal can be heard, the word of the section 3, Act of 1870 being, after stating conditions—"the Court shall thereupon hear," etc.

Proceedings after Appeal—Warrant may issue.

See section 70.

CHAPTER VI.

32-33 Victoria, Chapter XXXII.

An Act respecting the prompt and summary administration of Criminal Justice in certain cases.

Assented to 22nd June, 1869.

This Act was extended to Manitoba by 37 Vic., c. 39.

To Prince Edward Island by 40 Vic., c. 4.

To British Columbia by 37 Vic., c. 42, and to the District of Keewatin by 39 Vic., c. 21.

The principal matters, to be noticed and observed in proceedings under this Act, are:

1. Who has jurisdiction over the charge to try the same?

The party offending must be charged with offence before a "Competent Magistrate."

For meaning of expression "Competent Magistrate" as applied to the Provinces of Nova Scotia and New Brunswick. See 37 Vic., c. 40, (1874).

To British Columbia, or District of Keewatin, or to Prince Edward Island, see 37 Vic., c. 42, Schedule A, and 39 Vic., c. 21; also 40 Vic., c. 4.

In applying this Act to the District of Keewatin, the jurisdiction of the Competent Magistrate—which expression shall be considered as meaning two Justices of the Peace sitting together, as well as any functionary or tribunal having the power of two Justices of the Peace—shall be absolute without the consent of the part charged. In British Columbia the same provision is made by 37 Vic., c. 42, Schedule.

In Prince Edward Island the same provision is made by 40 Vic., c. 4, Schedule.

In Manitoba the expression "Competent Magistrate" shall have the same meaning, and include the like functionaries and tribunals as with respect to the Provinces of Quebec and Ontario. See 37 Vic., c. 39, s. 3.

Such functionaries and tribunals are mentioned in 32-33 Vic., c. 35, s. 8, (1869).

2. What offences the Competent Magistrate has jurisdiction to try?

These are larceny—value not exceeding ten dollars.

Attempt of larceny from the person, or simple larceny.

Aggravated assault.

Assault on any female or child made under certain conditions.

Assault, or obstructing, molesting, or hindering any Magistrate, Bailiff or Constable, or officer of customs, or excise, or other officer in the lawful performance of his duty.

Keeping house of ill-fame or disorderly house.

Committing misdemeanours under Act, passed in 40th year of Victoria, entitled, "An Act for repression of betting and pool selling": c. 31, s. 3.

3. Under what conditions the Competent Magistrate may deal with offence?

These are set forth in section 3 of Act.

It will be noticed that the jurisdiction of the Competent Magistrate is absolute in certain cases, and as to certain persons as set forth in sections 15 and 16 of Act, in which cases the consent of party is not necessary to proceeding with trial; so, also, it is absolute in District of Keewatin, British Columbia and Prince Edward Island. (See *Ante.*)

Where consent is necessary, and not given, then the Competent Magistrate must proceed as in ordinary cases of information under the Act relating to Indictable Offences. See section 8.

The mode of summoning the party and the proceedings on party making defence or pleading guilty, the summoning of witnesses, and the sentence on parties convicted and the carrying out of same, and the means of levying the fine imposed, are pointed out in sections of the Act, and are to be specifically followed; and the principles and law, governing the provisions, are similar to the Act relating to proceedings on Indictable Offences, except where express provision is otherwise made.

The provisions as to defects and quashing of convictions are also set forth, and the necessary forms of conviction given in Schedule to Act.

32-33 Victoria, Chapter XXXIII.

An Act respecting the trial and punishment of juvenile offenders. *Assented to June 22nd, 1869.*

As to the extension of this Act to Manitoba, see 37 Vic., c. 39.

To the District of Keewatin, see 39 Vic., c. 21.

To British Columbia, see 37 Vic., c. 42.

To Prince Edward Island, see 40 Vic., c. 4, where the meaning of the expression, "the Justices" and "any two or more Justices," is specifically stated.

What the expression includes, in the Provinces of Quebec, Ontario and New Brunswick, is stated in the first section of Act.

32-33 Victoria, Chapter XXXIV.

An Act respecting juvenile offenders within the Province of Quebec. *Assented to June 22nd, 1869.*

This Act refers to offenders under 16 years, and provides for their detention in a certified Reformatory School, with provisions for their discharge, and makes provision for the punishment of persons, breaking the Rules of Reformatory Schools, and for the punishment of persons, aiding in the escape of any offender.

The application of the Act is confined to the Province of Quebec.

32-33 Victoria, Chapter XXXV.

An Act for the more speedy trial in certain cases, of persons charged with felonies and misdemeanours in the Provinces of Ontario and Quebec.

Assented to June 22, 1869.

This Act extended to Manitoba by 38 Vic., c. 54, where the meaning of expression as to Court and Functionaries is given.

The Act is extended to the District of Algoma by 37 Vic., c. 41.

The forms of accusation and records of conviction are given in Schedule to Act.

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